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The CONSTITUTIONS *of* COLOMBIA

BY

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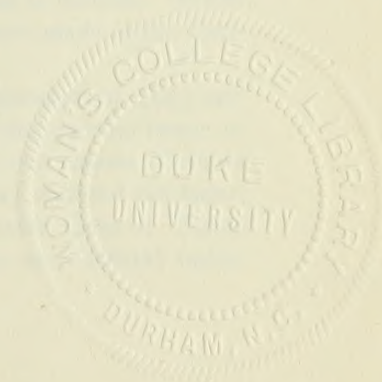
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Preface

THE CONSTITUTIONAL HISTORY of the Republic of Colombia is the story of a protracted struggle between federalists and centralists. Each group has controlled the government at one time or another, only to lose control by carrying federalism or centralism to extremes. Political stability did not become a characteristic of Colombian society until a compromise between the two extremes was accepted in 1886. The succession of constitutions which the country has had is proof of the intensity of the competition between the two groups for political power. Between 1811 and 1886 there were ten constitutions, six providing for a centralized government, four for a federal. These constitutions furnish the documentary evidence of the difficulties which the Colombian people have surmounted in their search for a government both beneficial and practical for their particular society.

The first constitution, that of 1811, created a federal republic. There was much dissatisfaction with it. Actually it was in force only until 1816, the year the Spanish General Morillo completed the reconquest of the country for Spain. Bolívar was not able to liberate Colombia until 1819. He governed without regard for the constitution until 1821, when a new one was adopted. The adoption of the Constitution of 1821 initiated a period of centralist control which was to continue until 1860. During this period six constitutions were drafted and put into force. Those of 1821, 1830, and 1832 each provided for increasing governmental centralization; and the climax of this trend was reached with the adoption of the Constitution of 1843. So complete was the subordination of local government and autonomy in the Constitution of 1843 that not only the federalists, but the more moderate centralists as well, were compelled to question its wisdom. Under pressure of popular disapproval, the centralists first adopted the Constitution of 1853, which made some concessions to localism. When this proved inadequate, still greater concessions were made in the Constitution of 1858.

The federalists were not appeased by the concessions of 1853 and 1858. What was granted was not enough, and they saw no reason to hope for more. As they viewed the future, only two courses of action were open to them: to acquiesce or to revolt. They accepted the latter, and, following the successful rising of 1860 under General Tomás Cipriano Mosquera, they organized the country as a federal union.

[vii]

The new federalist Constitution of 1863 remained in force until 1885, when Rafael Núñez issued a call for a constituent convention, which adopted the Constitution of 1886 providing for a centralized government.

During the period of federalist domination (1860-1885), a progressive paralysis of national life had developed. Provincial *caudillos* ignored the national government with increasing safety. They became virtually independent governors of isolated and insulated areas. Their localism was carried to the point where the complete disintegration of the country was inevitable. The "Regeneration" of Rafael Núñez (1885) saved Colombia from complete chaos.

The restoration of national unity and stability, or the "Regeneration" as Colombians designate it, was effected by the Independent party, which Núñez formed. This party was a union of centralists and those moderate federalists who were appalled by the excesses and inadequacies of their own party.

The very first article of the Constitution of 1886 adopted by the Independents epitomizes their position: "The Colombian Nation is reconstituted a unitary Republic." This was their article of faith. They had learned the lessons their history had to teach, for this constitution, as amended in the Codifications of 1936 and 1945, is still the constitution of Colombia. Government under it has never been completely centralized. There are provisions recognizing local powers and rights, but at the same time all determination of basic policy is vested in the national government. Colombians refer to their government as one based upon the principle of *centralización política y descentralización administrativa*. It is the Colombian compromise between centralization and federalization.

This study is a collection of the Colombian constitutions in translation arranged chronologically. Preceding the text of each is an editorial introduction which has two purposes: to summarize the political events leading to the adoption of the given constitution and to clarify the salient characteristics of the government set up under the constitution.

The texts of the constitutions of 1811, 1821, 1830, 1832, 1843, 1853, 1858, 1861, and 1863 translated in this study are those found in Manuel Antonio Pombo and José Joaquín Guerra's *Constituciones de Colombia* (Bogotá, 1911). Texts in other sources were consulted for purposes of collation. Texts of the Constitution of 1886 and the Codifications of 1936 and 1945 are those published by the Colombian Ministry of Government. Except as otherwise indicated in footnotes, the

historical data were obtained from Pombo and Guerra's work, mentioned above, and from Jesús María Henao and Gerardo Arrubla's *History of Colombia* (trans. J. Fred Rippy; Chapel Hill, N. C., 1938).

The author wishes to express his deep appreciation to those Colombians who made his sojourn among them so pleasant and instructive for a student of Colombian constitutional history. He is especially indebted to Dr. Roberto Cortázar, Secretary of the Colombian Academy of History; Dr. Arturo Acuña A., an official in the Ministry of Education; and Dr. Tulio Enrique Tascón, a former president of the Council of State. A Duke University Research Council grant is gratefully acknowledged. For reading the manuscript and offering invaluable suggestions, the author also wishes to express his gratitude to his colleagues in Duke University: Professors John Tate Lanning, R. Taylor Cole, and Paul H. Clyde. What errors appear are the author's own doing.

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The CONSTITUTIONS *of*
COLOMBIA

ACT OF FEDERATION
OF THE
UNITED PROVINCES OF
NEW GRANADA
(Constitution of 1811)

Constitution of 1811

HISTORICAL BACKGROUND

STUDENTS OF THE HISTORY of Colombia usually consider the uprising of the *Comuneros* in 1781 as the first important step on the road toward independence. This movement achieved no concrete results because the Viceroy, Manuel Antonio Flórez, repudiated the capitulations signed at Zipaquirá on June 8, 1781, and executed the leaders. The importance of the rebellion of the *Comuneros* is not in what it accomplished, but rather in the fact that it indicated that the people of Colombia were fast developing a frame of mind receptive to radical changes in their political life and organization. It showed the impulse of the people to question vigorously the authority of the government to carry out a tax program which was unacceptable to them, and in this there is the germ of the idea of government based on the consent of the governed.

A few years later the French revolutionary idea of the dignity of man became an important part of the political thinking of the people of New Granada. In August, 1794, Antonio Nariño translated and had printed the *Declaration of the Rights of Man and of the Citizen*. For this he was sentenced to ten years' imprisonment in Africa, his property was confiscated, and he was to be perpetually exiled from America. He later returned to New Granada to see the fruits of his efforts.

It is beyond the purpose of this introductory statement to set forth in any detailed fashion the events leading up to independence and the establishment of a new political regime. The imperative necessity for self-government and independence from Spain did not become obvious until the Napoleonic occupation of the mother country. The political confusion resulting from Napoleon's invasion brought the colonists face to face with the need to examine the whole question of political authority as well as the nature of their relationship to the "resistance government" in Spain.

The Supreme Junta of Spain and the Indies, also known as the Central Junta, was forced to flee from Madrid. It moved to Seville and directed the resistance from there. While in that city it turned to the colonies for assistance in resisting the French and in restoring Ferdinand VII to the throne. This junta requested financial support

and proposed that a *cortes* be assembled. The Americans were invited to send representatives. The colonies were assigned nine representatives, whereas Spain was given thirty-six.¹

This inequality of representation was by no means well received in New Granada. The dissatisfaction of the Americans was so intense that they were brought to the realization that the time had come to make clear to Spain their interpretation of the constitutional position of the colonies.

Briefly stated, their interpretation was that the colonies owed allegiance only to the king and not to the Spanish government as such. When the king was not in a position to exercise sovereignty, the right to exercise it reverted to the several provinces, metropolitan and overseas alike, and each was placed upon a footing of equality with and independence of all the other provinces. Consequently any participation in a central government must *ipso facto* be on the basis of entire equality. In short, this was the American view of the political effects of the Napoleonic invasion, and an event nearer home furnished the Americans an opportunity to make their position articulate.

Because of the turmoil in Spain and impatience with the government's ideas concerning colonial collaboration, the leading citizens of Quito, in imitation of Spain, set up a Supreme Junta of Government to govern the Presidency of Quito. The junta issued a proclamation calling on other colonial centers to do the same. When this news and a copy of the proclamation reached Santafé (Bogotá), pressure was brought upon the Viceroy, Antonio Amar y Borbón, to call a meeting of the prominent citizens to study the matter and decide upon a plan of action.

In the debates it was evident that there was an irreconcilable division of opinion. The Americans argued that Quito had the right to set up such a junta and they were very much in favor of constituting a similar body in Santafé composed of representatives elected in each town. The Spaniards, on the other hand, maintained that the action at Quito was seditious and disloyal to the central government and should be put down by force. The Viceroy acted upon the latter opinion and sent an armed force to Quito to suppress the junta there. He also took strong measures in Santafé to prevent the formation of a junta in that city.

It was at this same meeting that the proposals of the Supreme

¹ Manuel Antonio Pombo and José Joaquín Guerra, *Constituciones de Colombia*, 2d ed., I, 26. Jesús María Henao and Gerardo Arrubla, in their *History of Colombia*, state that the Americans were given twelve representatives (p. 193).

Junta of Spain were discussed. It was decided to protest the representational arrangement proposed. In implementing this protest the whole constitutional position of the colonies was reviewed and summarized. A memorial of grievances (*Memorial de agravios*), dated November 20, 1809, was drafted by Camilo Torres. This famous document called for representation of the colonial provinces on a basis of equality with the Spanish provinces. It also demanded the right to organize juntas for the defense of the country. The Viceroy prevented the memorial from reaching Spain. He could not, however, prevent the circulation of its text in New Granada. It had a great unifying effect and strengthened colonial determination to stand firm against domination by the "resistance government" in Spain.

In February, 1810, the Council of Regency, successor to the Supreme Junta of Spain, proclaimed the equality of the overseas provinces, which was tantamount to a recognition of their right to establish juntas of defense and government. The Council also requested anew that representatives be sent to Spain to participate in the government; however, nothing came of this in New Granada because of the opposition of the Viceroy.

The Americans decided to await the arrival of the commissioner whom the Council of Regency was sending to Santafé. Since the commissioner, Antonio Villavicencio, had authorized the establishment of a junta in Cartagena, the people of Santafé hoped he would do the same for them when he arrived in that city; but events were precipitated prior to his arrival. Elaborate plans were being made to welcome Villavicencio upon his arrival in the capital. A banquet was to be an important part of the ceremonies of reception. Some Americans went to the store of a Spanish merchant named José Llorente to borrow a porcelain ornament to be used as a centerpiece at the banquet table. Llorente, always bitter toward Creoles, took this occasion to express himself quite candidly upon the subject. Words were exchanged, and this relatively insignificant business culminated in a riot of first-class proportions.

Excitement was high, and the people called for an open meeting (*cabildo abierto*). Although the Viceroy refused to call such a meeting, he did agree to an extraordinary one (*cabildo extraordinario*). As soon as it was in session the people rushed in and converted it into an open meeting. By the next morning (July 21, 1810), the Supreme Junta of the Kingdom of New Granada was organized and installed.² The junta quickly recognized Ferdinand VII and took over the task

² Pombo and Guerra, *op. cit.*, I, 45ff.

of governing until a national constitution setting up a federal union of the provinces could be drawn up. A few days later recognition of the Council of Regency was withdrawn. The Viceroy was imprisoned and later sent back to Spain.

After a short period of excitement and confusion conditions were stabilized. Then the junta invited the provinces of New Granada to send one deputy each to Santafé to represent them in a national assembly (*Cortes del Reino*) which was to govern the country and draw up a national constitution. The rest of the country did not react any too well to this proposal. Some provinces set up their own juntas and refused to recognize the authority of that of Santafé. Fearing Santafé's hegemony, Cartagena accused that junta of centralist ambitions and invited the provinces to send representatives to a meeting in Medellín for the purpose of drawing up a truly federal constitution. Nevertheless, Mariquita, Neiva, Nóvita, Pamplona, and Socorro each sent a delegate to Santafé; and the assembly was installed on December 22, 1810. Once established, the assembly attempted to take over the government of the country and push the Supreme Junta of Santafé into the background. The junta, jealous of its part in this great moment in Colombian history, resisted; and a contest developed between these two bodies. The assembly was the loser in this contest; two months after its establishment it expired.

Seeing the direction in which events were running, the junta set up a constituent assembly composed of delegates elected by heads of families to draw up a constitution for the Province of Cundinamarca. This constitution was signed March 30, 1811, and the Republic of Cundinamarca was born. The first president was Jorge Tadeo Lozano. He was not a forceful man, and his tolerance for the idea of a national organization along federal lines did not please Antonio Nariño. That staunch advocate of a strong centralized national government began a campaign of ridicule of Lozano and the federal idea in the periodical *La Bagatela* and in a short time succeeded in replacing Lozano as president of Cundinamarca. Lozano resigned in September, 1811; Nariño took office a day or so later.

Lozano, however, was not entirely thwarted, for before resigning he had the satisfaction of seeing delegates to the constituent congress arrive in Santafé. The provinces of Cartagena, Antioquia, Casanare, Chocó, Cundinamarca, Neiva, Pamplona, Socorro, and Tunja were represented. After some delay the congress, ignoring Nariño's advent to power, was organized and on November 27, 1811, signed the *Act of Federation of the United Provinces of New Granada*.

POLITICAL ORGANIZATION

The constituent congress was keenly aware of the centrifugal force of separatist sentiment in many parts of the country. That the representatives realized the impossibility of establishing a very effective union at that time is most wistfully expressed in the exhortation that the Provinces "bind themselves by a pact as permanent as the wretched human state permits" (Art. 6). They did not intend that the Constitution of 1811, drawn up in those troubled times, should have a long life. They reserved "for a better occasion and a more tranquil time the Constitution which shall regulate definitively the interests of this great people" (Preamble; see also Art. 61).

The Provinces, parties to the pact, "solemnly proclaim their desire to be united in a federal association which gives the General Government the special and proper powers necessary to govern the nation and reserves to each of the Provinces its liberty, sovereignty, and independence in whatever is not of common interest" (Preamble). "All that which is not of general interest nor expressly delegated in this pact of federation shall always be understood to be retained and reserved" to the Provinces (Art. 7[8]).

The leaders of New Granada, having committed themselves to a plan of action which had independence as its goal, naturally considered that "common defense is one of the first and chief objects of this union . . ." (Art. 12). Fourteen articles of the seventy-eight to be found in the constitution are devoted to this matter. Many of these are utilized to set forth the obligations of the Provinces to train and furnish troops for the service of the union. To assure a maximum of individual co-operation it was provided that "all parish priests shall be requested by the civil authorities . . . to explain this as a religious duty" (Art. 17).

There is extremely little to be found in the Constitution of 1811 relating to the *organization* of the national government. The constitution itself establishes only one organ of government, namely, Congress, to which was given all the powers of the national government (see Art. 10). The exercise of power over all matters within the jurisdiction of the national government belonged to Congress. However, "as the judicial function distracts the attention which should be given to more important things such as common defense and general welfare," Congress was empowered to create courts "from outside its own membership, reserving the exercise of legislative and executive functions to itself . . ." (Art. 59).

Congress was to be composed of one or preferably two Deputies from each Province. Whether one or two Deputies were sent was to be determined by the Provinces themselves (Art. 51). "The Deputies, whether there are one or two for each Province, shall have equal votes" (Art. 52).

This is about all the constitution has to say concerning the organization of the national government. The remaining articles are devoted to three general classifications of subject matter, i.e., defense, the powers and jurisdiction of the general government, and the constitutional position of the Provinces in the union.

There seems to be no need to make any remarks about the defense provisions other than what has been said above. Nor does it appear that any useful purpose could be served by attempting a summary of the provisions relating to the powers of the general government. As in all federal constitutions, they attempt to define matters of national scope, and nothing unusual appears therein. However, an attempt to summarize the provisions dealing with the constitutional position of the Provinces in the union does seem justified.

It is suggested that the Constitution of 1811 organizes a federation, not a confederation. There is a clearly defined provincial jurisdiction, and, to repeat, "All that is not of general interest nor expressly delegated in the pact of federation shall always be understood to be retained and reserved" to the Provinces (Art. 7[8]).

There is also a national jurisdiction. The general government of the union is granted "all those powers which may not be exercised without general representation, without the concentration of the common resources, and without the co-operation and work of all the Provinces" (Art. 7). Many articles in the constitution are devoted to defining the various aspects of the jurisdiction generically set forth in the quotation just made.

The right of secession is neither expressed, nor, it is suggested, can it be implied in any of the provisions. There is a "supremacy clause." Article 76 provides: "Once the covenants of this Union are accepted, no Province shall refuse to carry them into effect, and it may be compelled to abide by them by all the means at the disposal of Congress . . ." (Art. 76).

The Provinces were not to enter into foreign relations (Art. 40). Interprovincial compacts were subject to congressional approval and veto (Art. 43). Congress took cognizance of all interprovincial disputes as well as of disputes between citizens of different Provinces (Arts. 44 and 47). Interprovincial privileges and immunities of the citizens

of the several Provinces were constitutionally protected, and "full faith and credit" for the judicial proceedings and similar matters was to be given in all the Provinces (Arts. 48 and 50).

Provinces had a greater measure of control over their representatives in Congress than do the States in the United States of America. It was provided that "for the present the stipends, fees, and salaries of Deputies shall be paid by their respective Provinces until such time as the same may be provided out of the common fund of the Congress . . ." (Art. 58). The Provinces also had the constitutional authority to "revoke the powers of their Deputies whenever they wish and grant them to others who shall replace them" (Art. 52). Congress also had authority to expel Deputies for improper conduct (Arts. 54 and 55).

The Provinces, as is to be expected, were given an important place in the amendment procedure. As to deletions from the constitution, it was provided that "nothing contained in the Constitution may be revoked without the express consent of the Provinces, and they must be heard in this connection the same as they have been and are going to be heard in connection with the sanction [of this constitution]; and no action taken to the contrary shall have any force or authority since such is to be considered as contrary to their express and declared will" (Art. 74). On the other hand, "Should matters of grave importance arise which may not be comprehended in the covenants of this federation or in its general rules and which require the consent of the Provinces, they shall be consulted provided there is no danger in such delay; but if there is danger in delay, whatever measures are considered judicious shall be provisionally taken, subject always to sanction by the said Provinces" (Art. 75).

As stated above, the Constitution of 1811 was signed on November 27 of that year. The Congress for which it provided was not installed until October 4, 1812, in Leiva. That is to say, political relations between Cundinamarca and the union were so unstable that the national government could not be organized and put into operation until very nearly a year after the signing of the constitution.

In view of the political instability prevailing at the time, it is remarkable that Congress was able to hold the government together while operating under the terms of the constitution. After two years' effort, however, the inconveniences and deficiencies inherent in a constitution which contained so few provisions for the organization of the general government became intolerable. An amendment was adopted on September 23, 1814, which authorized Congress to set up an execu-

tive branch of government. The amendment provided that the Executive Power be vested in a triumvirate to be elected by Congress. The chairmanship was to pass from one to the other every four months, but the chairman was to function merely as *primus inter pares*.³ Congress implemented the amendment by legislation (*reglamento*) enacted on October 21, 1814. The legislation set forth the qualifications, method of election, tenure, powers, and functions of the executive triumvirate.⁴

Any arrangement which provided for a plural executive whose election and powers existed at the will of Congress and were not founded on and defined by express constitutional provisions was destined to fail, a destiny made all the more inevitable by the perturbed conditions in the country. On November 15, 1815, another amendment was adopted which provided that the Executive Power should be vested in one person to be known as the President of the United Provinces of New Granada. This officer was to be elected for a term of six months and was eligible for re-election. Election by Congress was retained as the method of selection. The amendment provided that the powers and functions of the President were to be those granted by Congress to the triumvirate in its legislation of October 21, 1814. The amendment further provided for a Vice-President and a Council of State.⁵

A translation of the text of the *Act of Federation of the United Provinces of New Granada*, herein referred to as the Constitution of 1811, follows.

³ For text, see *ibid.*, I, 501-509.

⁴ For text, see *ibid.*, I, 511-519.

⁵ For text of the amendment of 1815, see *ibid.*, I, 523-526.

ACT OF FEDERATION OF THE UNITED PROVINCES OF NEW GRANADA

In the Name of the Holy Trinity, Father, Son, and Holy Ghost, Amen.

We, the Representatives of the Provinces of New Granada assembled by virtue of full powers granted by our respective Provinces, which have been mutually recognized and found in due form, considering the long series of events which have taken place on the peninsula of Spain in our former mother country since its occupation by Napoleon Bonaparte, the Emperor of the French; the several new governments which have rapidly succeeded each other without any of them having been capable of saving the nation; the disregard of our appeals each time more urgent so that human prudence may no longer hope for a good end; and finally, the indisputable rights which the great people of these Provinces have, as do all other peoples of the world, to look to their own preservation and to adopt a form of government suited to that end, following the spirit, instructions, and the express and conclusive wish of all the said Provinces, which have formally and solemnly proclaimed their desire to be united in a federal association which gives the General Government the special and proper powers necessary to govern the nation and reserves to each of the Provinces its liberty, sovereignty, and independence in whatever is not of common interest, guaranteeing to each of them these precious prerogatives and the integrity of its territory, fulfilling this sacred duty, and reserving for a better occasion and a more tranquil time the Constitution which shall regulate definitively the interests of this great people, have agreed and do agree to the following Pact of Federation:

Article 1: The name of this confederation shall be: *The United Provinces of New Granada.*

Article 2: There are admitted and for the present form part of this confederation all the Provinces which, at the time of the revolution of the capital of Santafé on July 20, 1810, were considered as such and which made use at that time of the right to reassume their internal government and administration, without prejudice to any pacts or conventions which they have entered into or may enter into and which shall not be disapproved as being prejudicial to the Union.

Article 3: Those Provinces or peoples which did not belong to New Granada at the time mentioned, but which are bound to New

Granada by geography and by commercial and other relations, may now join the confederation or one of the border Provinces by pacts or negotiations entered into with the States or political bodies to which they now belong, without whose approval and consent this step may not be taken.

Article 4: In each and every one of the United Provinces of New Granada the Holy Apostolic Roman Catholic religion shall be preserved in all its purity and integrity.

Article 5: Each and every one of the Provinces which are or may become members of the Union of New Granada or members of other neighboring States expressly disavow the authority of the Executive or Regency, the Cortes of Cádiz, the Courts of Justice of Spain, as well as any other authority created by these or by the people of the Peninsula in that place, the adjacent islands, or any other place without the free and voluntary agreement of the people of said Provinces. Hence in none of the said Provinces shall be obeyed or executed any of the orders, decrees, or warrants which may emanate from these authorities or from any other authorities set up in the Peninsula of any nature whatsoever, whether they be civil, ecclesiastical, or military, since the said Provinces recognize as legitimate and will obey only the authorities which their respective peoples have instituted by the exercise of their own power, and, outside the Province, the authorities created by those powers granted the confederation of the Provinces by this Act, which are delegated to preserve and foster the interests and purposes of the Union; this, however, shall neither break the bonds of fraternity and amity nor impair the commercial relations which unite us to unoccupied Spain, provided these people do not aspire to govern us and provided they hold the same sentiments that we manifest toward them.

Article 6: The United Provinces of New Granada recognize each other as equal, independent, and sovereign, guaranteeing to each other the integrity of their territories, internal administration, and the republican form of government. They mutually promise the firmest amity and alliance, they swear inviolable faith, and they bind themselves by a pact as permanent as the wretched human state permits.

Article 7: The Provinces reserve their inalienable rights: (1) the right to establish the government most convenient to their circumstances, provided always that it is popular, representative, and generally analogous to that of the Union in order that the greatest harmony and the greatest administrative facility may exist between them when they have divided their powers and prescribed the rules under which their governments are to be conducted; (2) the policy and internal and eco-

nomic government of their people as well as the choosing of all classes of officials; (3) the formulation of their civil and criminal codes; (4) the establishment of courts and superior and inferior tribunals dealing with judicial matters in all instances; (5) the creation and regulation of provincial militias, their armament and discipline, for their own defense as well as that of the United Provinces when occasion requires it; (6) the formation of provincial treasuries by such taxes and contributions as may be deemed necessary without prejudice to those of the Union or to the rights which may be given to it; (7) the protection and encouragement of agriculture, arts, sciences, commerce, and whatever else is conducive to their welfare and prosperity; (8) finally, all that which is not of general interest nor expressly delegated in this pact of federation shall always be understood to be retained and reserved. There are granted to the Union all those powers which may not be exercised without general representation, without the concentration of the common resources, and without the co-operation and work of all the Provinces.

Article 8: To assure the enjoyment of these precious rights, to consolidate the Union and to provide for the common defense, the confederated Provinces mutually bind themselves to furnish whatever aid may be necessary to meet any violence or internal or external attack which may be directed against the enjoyment of these rights by contributing arms, men, money, and anything else in their power; they shall not lay down their arms or cease granting aid until the danger is ended, and until the liberty of the particular Province or that of the country is assured.

Article 9: Likewise all of them promise to contribute to the common welfare, sacrificing their individual interests when maintaining them would be prejudicial to the common good, preferring this in every case to their own, and looking upon the people of New Granada in all the Provinces as friends, allies, brothers, and fellow-citizens.

Article 10: Since it would be impossible to achieve these purposes without a body entrusted with great powers to function as conservator of the rights of the people and director of their resources, the Deputies who represent the Provinces by virtue of their said full powers shall organize themselves as a Congress in which shall reside all the aforesaid powers as well as those stated below; for the present the Congress shall be composed of one or two representatives from each Province on the basis of perfect equality until such time as the basis of representation shall be changed to that of population according to a ratio to be

adopted, but in no case shall any Province, no matter how small, be deprived of at least one vote in the Congress.

Article 11: The Congress of the United Provinces shall be installed where it is deemed most desirable, changing its meeting place whenever necessary or when the interests of the Union or considerations of common defense require it; and wherever it meets it shall exercise freely and securely all the powers with which it is invested with entire sovereignty and independence.

Article 12: Common defense is one of the first and chief objects of this Union, and since it cannot be effected without arms, the Congress shall have power to raise and organize the armies deemed necessary and such naval force as circumstances permit, the warships as well as all land and sea forces possessed by each Province being put at the disposition of Congress to be used wherever Congress shall decide, it being always understood that whenever they are so employed under orders of Congress such forces and their expenses shall be paid out of the common fund of the Provinces.

Article 13: The garrisoning of forts and frontiers shall be done solely by the government of the Union; but under present circumstances of pressing danger, and while it would be difficult to meet them without some immediate authority to regulate and direct movements and operations, such authority for the present shall be delegated to the provincial governments; it being understood that such governments, in cases where the necessity is not urgent, shall notify the Congress and await the orders of the same, and in all other cases, make notification within a reasonable time.

Article 14: The above provisions relative to garrisoning shall also apply to the naval and other forces, whose direction, organization, appointment of officers of all ranks, as well as the establishment of arsenals and dockyards, and the construction and arming of warships are exclusively under the authority of Congress; for the present, however, they shall remain under the control of the provincial governments subject to the restrictions and limitations already mentioned.

Article 15: Congress shall have the authority to assign to each of the Provinces the number of militia which it ought to contribute to the common defense in accordance with the circumstances in which it finds itself with respect to the enemy, its resources in this matter, and its population. The Province shall see to it that the militia go fully clothed, armed, and equipped to the appointed place within the time prescribed; but any expenses arising from the time of their entering the service of the Union shall be paid from the common treasury, as

is the case with the regular forces. Officers of both kinds of troops up to and including the rank of colonel shall be appointed by the Provinces; but from this rank upwards appointments shall be made by Congress, particularly that of Commanders or Generals in Chief of any expeditionary forces.

Article 16: The Provinces shall provide themselves as quickly as possible with whatever side- and fire-arms their populations are accustomed to use, or in which they are to be properly trained in the future, and more especially with cannon and other campaign equipment along with the proper ammunition, keeping the same in storehouses until such time as they may be needed.

Article 17: The Provinces shall lose no time in training such troops and in forming them into companies and corps according to their population, drilling them once or twice a week, particularly on holidays after attending mass at their respective parishes, an occupation which, aside from its utility for the country, diverts them from other less healthful pursuits and is today considered more acceptable in the eyes of God since their services are to be used in the defense of the country itself, of their dearest rights, and of the menaced religion of their fathers; all parish priests shall be requested by the civil authorities, if they have not done so of their own accord (something not to be hoped), to explain this as a religious duty.

Article 18: Congress shall have the authority to issue all necessary orders and regulations, whether general or particular, for the direction and government of the land and sea forces; it shall be able to do the same for the provincial militia forces, leaving to the Provinces the duty of training and instructing them in accordance with such regulations to the end that a uniform system shall prevail throughout the armies of the Union. But upon cessation of the war in which the country is now engaged, no Province shall maintain any regular troops or warships except such as may be necessary to garrison the frontiers and fortresses and to protect commerce; these are to be at the disposition of and subject to the authority of Congress.

Article 19: The ports and Provinces of New Granada which are still oppressed by the tyrants shall be the primary objects of defense and of the tender solicitude of the Congress, assuring the first against all foreign invasion and delivering the second from the chains which now bind them, so that, freed from their yoke and in possession of their free will, they may establish free and independent governments such as those which now happily compose this Union.

Article 20: As none of this can be effected without a national

treasury to meet the great expenditures necessary for the salvation of the country and for the common security at such times when we shall have to fight with foreign and domestic enemies, or with such which prudence at least bids us to fear and counsels that in order to avoid or vanquish them we be forearmed, Congress shall have the authority to impose taxes, levy contributions, and fix duties upon all those objects and in all those matters of a general nature which are not peculiar or special to any Province in particular, and also to allot quotas or extraordinary contingents to each of the Provinces in accordance with its population and other circumstances, but always in equitable proportions; the respective legislative councils and governments shall collect and furnish the same without dispute or excuse, being responsible to the other Provinces for failure to comply and subject to such measures as Congress shall see fit to take in order to obtain payment of the quota or to secure it by some other means at the expense of the delinquent Province.

Article 21: By virtue of these principles, and considering as belonging to the Provinces in common the import duties of the ports and frontiers which may be applied only to foreign commerce and which in the last analysis are exacted of all the Provinces of the Union where such merchandise is sent and consumed, the receipts from such duties shall constitute one of the sources of the Confederation's revenue and the said ports and frontier places may never hinder or obstruct foreign commerce (including even that of Spain or of the ports of the Spanish Peninsula and the adjacent islands, or of other states, kingdoms, provinces, islands, or continents of America which form no part of New Granada) by new duties or any other kind of impediment which may be prejudicial to the common good and which may not be expressly established, approved, and decreed by the general Congress.

Article 22: To the common fund of the Congress shall also belong the proceeds of the mints now existing and of any which may be established in any of the Provinces, and only the Congress shall have authority to coin money and to set the weight and value thereof. Consequently the two mints now existing at Santafé and Popayán shall be under the direct and exclusive authority of Congress, and all their proceeds shall be at its disposal.

Article 23: It is left to the generosity of the Provinces to cede wastelands lying within the known and inhabited limits of their territories, which lands may someday, by means of naturalization of foreigners and increase in population, be productive of considerable revenue for Congress; but Congress shall unquestionably consider as

belonging to it those lands which may today be considered *nullius* because they are uninhabited and lie outside the recognized boundaries of any of the Provinces although included within the boundaries which divide the country from other powers, states, or former viceroyalties, such as those drained by the Amazon, Napo, Putumayo, Caquetá, Guaviare, and other rivers emptying into the first or into the Great Orinoco where in due time there shall be established new towns forming part of this Union and where it behooves us to maintain at least frontier posts to separate us from the neighboring countries which occupy the eastern coast of South America.

Article 24: In carrying out the above, the wandering tribes or nations of wild Indians situated or established within the said territories shall be caused no vexation or injury; on the contrary, they shall be considered the legitimate owners and there shall be extended to them the benefits of civilization and religion by means of trade and all the other mild measures suggested by reason and dictated by Christian charity which alone become a civilized and cultured people, unless, of course, their hostilities oblige us to resort to other measures.

Article 25: Therefore we may enter into treaties and negotiations with them on such matters, protecting their rights with all the humanity and philosophy which are required because of their present mental incapacity and because of the evils caused them, without our being guilty thereof, by the conquerors.

Article 26: But if, within the recognized boundaries of the Provinces or between Provinces, there are tribes of this nature already established which might conveniently form parts of the Union or of the Provinces, more especially if they are not burdened with ignominious tribute or a barbarous and despotic government such as has oppressed their brothers for three hundred years, they shall be invited and induced by mild measures such as those afforded by treaty and commerce to associate themselves with us, and in this their religion shall be no obstacle inasmuch as perhaps someday they will yield to the true religion when they are able to be so convinced by the light of reason and the Gospel.

Article 27: The Congress shall consider as part of its funds any mine of precious metals which is not the property of any particular Province, or which has been voluntarily ceded by a Province to the Union, or which has been bought by Congress out of its funds to be exploited for the benefit of the State, as is done by those governments which are capable of doing so in order to lessen the burden of direct and indirect taxation of the people and with further public benefit and

utility in that such establishments afford opportunities for employment.

Article 28: In like manner shall be considered any establishment of manufacturing or invention, particularly those which cannot be supported by the income or resources of a Province. But in this as in the former case [that of the mines], the Union shall take care not to engage in projects which perhaps have more show and ostentation than true utility, or which are untimely; [these provisions] are designed only to serve as indication to the Provinces that the charges now levied against them are temporary, that someday their lot will be improved, and that when peace comes we shall be able to dedicate ourselves to the common welfare without demanding anything of them which may be painful, when all the revenues and the cares of a paternal government shall be for their benefit.

Article 29: If, notwithstanding all this, the Union shall be unable to meet expenses, which certainly under present circumstances it cannot, Congress shall take measures deemed necessary, such as borrowing on its funds and revenues, issuing paper money, and doing anything which necessity, urgency, and the resolute will of the United Provinces to protect themselves shall counsel, permit, or require to be done under the circumstances in order to obtain this supreme good.

Article 30: When the evils which today afflict us are ended and the safety and triumph of the fatherland permits Congress to turn its eyes to internal welfare, its first care shall be to invest its funds so as to attract to this country arts and sciences not known to us, to promote agriculture, facilitate commerce, open canals, make the rivers navigable, widen, bridge, and improve the roads; in short, to do all possible to secure benefits for this fortunate land which may for future generations someday be the fruits of the cares to which we have consecrated ourselves for our beloved country.

Article 31: In addition to the aforesaid matters, such as defense and revenues, there are others belonging to Congress because of their common nature, because of their general interest to the Provinces and because of the sovereign authority which Congress alone has to regulate and administer as the great representative body of the nation; such matters shall be explained, fixed, and defined in the following articles.

Article 32: The proceeds of the postal service and its ancillary services belong to the Congress, not so much because of their revenues and profits, but rather because their very nature demands uniform regulation, and they shall be under congressional control throughout the territorial extent of the United Provinces on land and sea; therefore, henceforth there shall not be paid in any of the ports any expenses,

repair bills, or freight charges on any mail ship except those sent by, or which are under the orders or at the disposal of, the Congress.

Article 33: Weights and measures as well as coinage, together with the regulation thereof, are under the exclusive control of Congress and no Province on its own authority may alter or change them; until it is decided otherwise, those now known to the peoples of Spanish America and to foreigners shall continue in existence.

Article 34: The royal highways and those from Province to Province, the navigable rivers or those which may be made so, the ports, wharves, canals, docks, and bridges of the said rivers, the places of entry and departure, and everything which may be considered as having a common nature and as belonging to the Provinces in general are under the authority of Congress and the same freedom of communication shall continue to exist; none of the Provinces may impede the free transit of citizens or their effects by restrictions or by bridge or ferry tolls greater than those which are charged its own inhabitants or which especially burden the inhabitants of other Provinces.

Article 35: To Congress belongs the regulation of interprovincial commerce, but for the present there shall be no alteration of the established practices or of their application to such commerce unless required by necessities of state, the general welfare, or on demand of the Provinces themselves, provided always that such changes do no injury to foreign commerce with respect to the port and frontier duties discussed above. For the protection of its own industry, a Province may prohibit the introduction for internal consumption of certain specified articles, or impose a new duty upon them with notice to and approval by the Congress; but this may not be done with respect to other Provinces having the right of free passage through such Province even as regards prohibited goods and articles unless Congress provides otherwise.

Article 36: There shall also be excepted from the general rule of liberty of internal commerce useful discoveries, the printing or reprinting of original works or new translations, large installations of machinery, and manufacturing establishments now unknown in the country, in favor of all of which Congress, with proper limitations and reservations and for a limited time, has seen fit to grant exclusive privileges to the authors and introducers, which privileges the Provinces may not contravene.

Article 37: No change is at present made in the commerce established and permitted with friendly and neutral nations, which shall continue in the peaceful relations now existing, nor shall they be caused the least annoyance or vexation so long as they continue to

observe the same conduct, harmony, and good will towards us. But the moment hostilities break out, or they cause them to be declared against us in any way whatsoever such as by aiding our enemies, invading our coasts, seizing our vessels and cargoes, or molesting our merchants or travelers in their persons and property because of the war which all or almost all of the Kingdom of New Granada is now prosecuting, or on any other pretext, the Congress shall repel with force and all other means at its disposal any wrongs or violence committed; it shall permit just reprisals, give letters of marque, and demand and obtain ample satisfaction for such offenses. However, no Province on its own initiative shall have the right to do any of these things, to arm privateers, issue letters of marque, make reprisals, or enter into hostilities even in cases of real grievance until after a formal declaration of war by Congress, or except in the event of sudden invasion or other imminent danger when it may not be easy to inform Congress and await its determination.

Article 38: Decisions which may be handed down on land or at sea concerning prizes taken as a result of the above or similar circumstances, regulations and the application thereof concerning them, the punishment of crimes and piracy committed on the high seas, and the courts taking cognizance of such cases, and everything else appertaining to maritime jurisdiction shall be under the authority of Congress.

Article 39: In pursuance of the system of peace and amity with all nations which do not try to commit hostilities against us and which respect our rights, we give asylum in our ports and interior Provinces to all aliens who wish to live peacefully among us, subjecting themselves to the laws of the Union and of the Province wherein they reside, especially if in addition to their good intentions they bring among us some useful trade by which they may make their living, obtaining for this purpose a letter of naturalization or permission from Congress, before whom they shall prove the above circumstances, principally in times when unrestricted immigration would be dangerous.

Article 40: Congress shall have complete control of foreign relations, whether with foreign nations or with other governments and states of America which are not incorporated in this Union; and no Province may separately enter into any treaties of amity, union, alliance, commerce, limits, etc. with any of them, or declare war or make peace, and therefore may not send or receive agents, consuls, commissioners, or public negotiators of any kind; in case such [treaties and exchange of agents] should be proposed to any of them, it is their duty immediately

to inform the General Congress and remit to it the official dispatches or communications concerning the same which they have received.

Article 41: Among the foreign relations which the Congress ought to maintain is one the importance of which should be impressed upon the Provinces, those relations with the Apostolic See by which the spiritual necessities of the faithful in these remote parts may be met by the erection of bishoprics, which under the old government were so needed and so neglected, and all the other establishments, orders, concordats, etc. by which, according to the practice and law of nations, the supreme power of the State may intervene for the spiritual welfare of its people.

Article 42: To the Congress shall also be entrusted decisions relative to the patronage (*patronato*), formerly exercised in America by the Kings of Spain, both with respect to the Provinces of New Granada collectively and separately concerning questions of permanency, administration, application of proceeds, and all other matters; and in doing this Congress may, if it is considered advisable, consult the prelates, universities, chapters, and other ecclesiastical bodies or call a national council to deliberate upon these and other matters of ecclesiastical discipline made necessary under the present conditions which prevent communication with the Apostolic See and which communication probably will not be re-established for some time; meanwhile the necessities of the Church are daily increasing and the faithful are in need of those spiritual resources which should be provided by the supreme power of the State as natural protector of the Church and as conservator of one of the first rights of the people, that is, their religion and conscience.

Article 43: The Provinces may not conclude among themselves treaties of amity, union, alliance, commerce, etc. without express notice to and approval by Congress, which shall be granted if such treaties are not prejudicial to the common welfare or to the welfare of a third Province. Such as have been entered into prior to July 20, 1810, as stated above, the time of the political transformation of the country, shall be submitted to approval by Congress; and they have no effect in anything contained in them which is contrary to the pact of this Union.

Article 44: Congress shall take cognizance of all present and future disputes between Provinces concerning the boundaries of their territory, jurisdiction, commerce, or any other form of dispute in which the Provinces, being parties in interest, cannot be at the same time also judges, and much less so when similar disputes or pretensions are prejudicial to the general welfare and disturb the peace of the other Prov-

inces. By the same token no provincial government may admit or incorporate within its territory any people, even when it is declared that it is done with the absolute voluntary consent of the people themselves or of the people of their Province, unless Congress has been notified and given its consent thereto.

Article 45: But this shall not prevent the voluntary union or association of peoples or Provinces with others whenever the general welfare or that of the particular peoples involved requires it for the improvement of internal government, administration of justice, or other benefits resulting from union or incorporation. On the contrary Congress shall promote such unions if the boundaries can better be regulated, or such would be conducive to an equalization of the Provinces, making them less dissimilar and disproportionate parts of the Union; and Congress should even decree incorporations, accessions, and unions at least temporarily when the Province lacks the resources or ability to contribute as others do to the common welfare and therefore such union is necessary, not only for its own welfare, but for that of the others; this is to be in operation until such time as the incorporated area through the increase of its population and resources is enabled to be independent, which independence shall thenceforth be guaranteed by Congress.

Article 46: Persons not favoring such union should accede to the will of the majority of the body politic of which they are a part; but if differences should arise between two parties equally powerful which cannot be amicably adjusted and which require the impartial formal decision by a third party because there are no bases of fundamental laws agreed upon beforehand for the settlement of such disputes, they shall submit the question to Congress before resorting to the dangerous and always sad recourse of arms; the Congress shall, without interfering in what does not concern it, settle as impartially and amicably as possible such disputes by resorting to all means of conciliation and then prescribing the rules to be followed.

Article 47: Congress shall take cognizance of and decide controversies and disputes between citizens of different Provinces, those between a Province and the inhabitants of another Province, and in general all those disputes where an appeal to a superior and impartial tribunal is necessary because the common interests of the Union are concerned, or because the authority of the respective Provinces is not sufficient to decide the matters in question or it is not sufficient to make the judgment duly effective because the parties, or some of them, are not subject to such authority.

Article 48: The free inhabitants of all the Provinces shall have the right to enter the territory of the others, to engage in trade and commerce there and enjoy all the privileges and immunities of free citizens without being subjected to greater burdens or limitations than are imposed upon the inhabitants thereof, and without being obstructed or hindered from traveling to other Provinces or from returning with their goods to the place from whence they came. They shall, however, be subject to all the rest of the laws of the particular Province in which they reside, trade, traffic, or travel.

Article 49: From this shall be excepted beggars, vagrants, and such persons as have fled from justice or for crimes committed in the Province whence they have fled, and who, upon demand of the respective governments, shall be surrendered without denial or excuse together with all their property and effects.

Article 50: For these and all other judicial proceedings which may occur between Provinces full faith and credit shall be given to their respective actions, registers, instruments, warrants, requisitions, etc. authorized and proved to be in due form, thereby preserving perfect harmony and understanding for the best administration of justice between the Provinces.

Article 51: Up to the present moment there is not to be found assembled the number of Deputies of which the Congress should consist in accordance with the first circular of convocation issued by the Junta of Santafé, partly because of the oppression existing in some of the Provinces, partly because of the difficulties which have befallen others which are disposed to send Deputies; these latter Provinces at least shall be urged to complete their nominations and have their Deputies proceed as soon as possible; each Province shall choose not one but two, designated as First and Second Deputy, as has been done by other Provinces and as is being done by those which at first had chosen but one, in order to avoid the inconveniences resulting from illness, absence, or any other cause which might deprive a Province of its representation, and moreover there can be a distribution of power, formation of committees, and a division of labor in those matters which today occupy the attention of Congress.

Article 52: The Deputies, whether there are one or two for each Province, shall have equal votes; and as they are to consider that the object of their appointment is to make them representatives of the Union in general rather than of any Province in particular, since without saving the former, efforts in behalf of the latter would be useless, they are to deliberate and vote with absolute liberty in so far

as they do not depart from the capital and fundamental pacts of this Union, preferring the welfare of the Union to that of their Province in particular, and following the dictates of conscience even when such run counter to their instructions, which, however, can never be presumed to have been given for selfish ends in view of the generous accession of the Provinces to this Union, and therefore the Deputies shall be presumed to be acting in good faith. But the Provinces may always revoke the powers of their Deputies whenever they wish and grant them to others who shall replace them.

Article 53: For the same reason they have absolute freedom of debate, and in no other place may they be accused, prosecuted, or tried for what they have written or discussed in the exercise of their functions in Congress; moreover, they shall be exempt from all arrest and imprisonment during the sessions and while traveling from and returning to their places of residence or while employed upon any commission, unless and except for some capital crime or one carrying an infamous penalty or one of confiscation of property, for treason or secret conspiracy against the State, or for disturbing the public tranquillity.

Article 54: The Congress can also, for just and lawful reasons, remove any Deputy who has made himself liable to this by his conduct, or by reprehensible excesses which are prejudicial to the honor of that body, the secrecy of its deliberations, or the general welfare and interests of the Union; and the Province which he represents shall without objection or excuse deprive him of his powers and choose another in his place.

Article 55: In such cases, if the excesses or crimes committed by the Deputy are also offenses against the Union and therefore subject to its jurisdiction, the formally expelled Deputy shall be turned over to the congressional court of justice to be judged and punished in the proper manner; but if such be a common crime having no connection with his official functions, he shall be placed at the disposition of his Province for trial.

Article 56: For the present, the Deputies shall continue in office for the time prescribed by their Provinces; but it is recommended to Provinces having two representatives, as mentioned above, that each should be elected annually beginning with the earliest or first, which procedure may be put into operation next year, 1812, so that the newly elected members may all enter upon their duties, if possible, at the same time, January 1, 1813.

Article 57: Congress may not settle important questions on declaration of war or the conclusion of peace; the number of troops and sum

of money to be furnished by the Provinces for the common defense or the defense of any of them in particular; the construction, acquisition, and arming of warships; the celebration of treaties of alliance, commerce, boundaries, etc. with foreign nations or states; the levying of taxes; the granting of letters of marque and reprisal in time of peace; the borrowing of money on the credit of the revenues of the United Provinces; alteration of the law on the value of currency or the admission of foreign money and the determination of its value; issuance of paper money; the alteration of the recognized weights and measures; matters of the patronage and other grave ecclesiastical matters in which the supreme power of the State is concerned; expulsion of a Deputy for reprehensible excesses in his public and private conduct; the selection of Generals in Chief and army and navy commanders, consuls, and public ministers without the concurrence of two thirds of the Deputies actually present in the place of the session of the Congress. Congress may not select Secretaries and Ministers of State, Justices of the Supreme Tribunal of Justice, administrators, accountants and treasurers of the mints, administrators and general accountants of the postal service, the captain of the congressional guard, and other chief responsible and confidential employees without the concurrence of two thirds of the members present provided this number is at least two thirds of the number of members present in the place of the session of Congress. Other questions shall be decided by simple majority of the said two thirds, that is to say, by seven votes if the said two thirds equals, for example, twelve members. Any number of members less than two thirds of the qualified membership or less than [two thirds of] the members present in the place of meeting may only adjourn to another day and try to make the other Deputies attend by means of summonses or penalties established for this purpose by the Congress in its regulations of organization and procedure. The Deputies shall submit themselves to all the decisions or resolutions on this matter even when such may be contrary to their own judgment, and they as well as their respective Provinces shall subscribe to, obey, and carry out the same; the said Deputies, however, shall reserve the right to abstain from voting, and even request publicity for the same when the matter involved does not require reserve or secrecy, in which case it shall be recorded in the Journal until such time as the necessity for secrecy no longer exists and it may be publicized without danger.

Article 58: The stipends, fees, or salaries of Deputies shall be paid by their respective Provinces for the present and until such time as the same may be provided out of the common funds of the Congress, the

number of representatives permanently fixed, and the powers of the Union distributed.

Article 59: The exercise of these powers over all matters within its control belongs to Congress; but as the judicial function distracts the attention which should be given to more important things such as the common defense and general welfare, the Congress shall create from outside its own membership the tribunal or tribunals necessary, reserving the exercise of legislative and executive functions to itself whether by the whole body or by sections thereof in so far as is permitted by the number of Deputies and the gravity of the matters occupying its attention.

Article 60: For the proper organization of these powers and the more efficient discharge of its functions, Congress shall make such rules as it deems necessary until a definitive Constitution regulates the details of the general government of the Union.

Article 61: Once the dangers surrounding us are removed, the Provinces which should form this Union have been united, and their population exactly known (which from today they are urged to ascertain for this and other purposes and to send as quickly as possible the records thereof drawn with accuracy and clarity), a national convention based on population shall be called to draw up a Constitution, unless the Provinces prefer to commit this work to the Congress, subject of course to their sanction and approval.

Article 62: To this end materials shall be prepared with all the observations which experience indicates, and to all wise persons of the Union shall be given the admonition to offer their ideas and information to their fellow-citizens that they may become disposed towards a liberal government.

Article 63: Those trials under the jurisdiction of Congress which result from the infraction of its laws or concerning matters under its exclusive control ought to be held away from the place of the sessions so as not to be a burden to litigants, and they shall be heard at least in the first instance by commissions, delegations, or in some other manner which will insure the most equitable, impartial, and accurate discovery of the truth and which will promote the correct administration of justice, reserving always the last instance, should the matter require it, to the high tribunal of justice which should reside in the place where congressional sessions are held.

Article 64: But it shall not be prohibited to the citizens of a Province, if they choose to do so, to prosecute their cases before the tribunals and courts of the defendant's Province and to agree to do so by

particular instruments and contracts renouncing all other rights which belong to them and submitting themselves to the laws and judges of the defendant's Province; and having once made this submission or renunciation, provided it is not prejudicial to the Union and is advantageous to the individual interests of the citizens, they shall not be at liberty to revoke or desist from it, but shall be compelled to abide by it.

Article 65: Likewise they shall be permitted to settle their differences by arbitration if they wish, such arbitrators being chosen from among the citizens of both Provinces to which the parties belong, or from among the citizens of one of them or of a third Province, and according to such regulations and penalties as may be agreed upon provided there is no prejudice to the Union.

Article 66: Nor shall any changes be made in any cases now pending before provincial courts except by voluntary submission and acquiescence of the citizens if their interests may be protected by having the case terminated in the court where it was begun.

Article 67: Congress shall create such offices and subordinate employments as are required for the dispatch of its business and as experience may indicate, selecting therefor the best qualified citizens of the Union, likewise also for its commissions and tribunals of justice. It is understood that the judges, officers, and employees in the pay of the Union cannot at the same time be in the service of any Province, or receive any pension or gift from it directly or indirectly, and the same shall be true with respect to members or individuals of the Congress.

Article 68: Nor may any of the former or latter officials receive gifts, emoluments, commissions, offices, titles, hereditary or personal distinctions from any foreign prince, king, or state; nor may the Congress itself grant favors tending to divide the citizens into classes and thereby compromising the liberty of the people. But it may reward in some other manner illustrious and heroic acts by which citizens may distinguish themselves, taking care that such rewards are directed more towards the encouragement of virtue and love of country than towards the satisfaction of pride and vanity.

Article 69: The title of the Congress shall be *Most Serene Highness [Alteza Serenísima]*; that of the President if he acts in his separate capacity or in official acts communicated through him, as well as that of the Executive should such office be created, shall be *Excellency*; that of the commissions or individual members of Congress, Ministers or Secretaries of State when addressed officially shall be *Lordship (Señoría)*; and in their private capacity, either verbally or by writing, that of *Sir (Merced)* like every other citizen; and that of

the Congress, its President, Executive, commissions, or individuals of the provincial governments and legislatures shall be *Excellency* or *Lordship* as provided in their respective Constitutions. With respect to foreign and other independent governments they shall be addressed by whatever titles they use or have assumed.

Article 70: The Congress shall have a modest guard to maintain its dignity rather than for useless show and pomp, and the expenses thereof shall be kept at a minimum.

Article 71: The Confederation shall have a seal with which to seal patents, dispatches, and other official documents requiring it; the violation or counterfeiting of the seal as well as the money or any other security of the Union shall be liable to the present penalties in force and to such additional ones as may be rendered necessary by the nature and enormity of the offense.

Article 72: The laws which, for these and other cases, now operate in the tribunals of the Union are those which have hitherto governed us in so far as they are not contrary to the present pact, nor incompatible with the actual state of things, nor prejudicial to the political situation of the Kingdom or Provinces of New Granada.

Article 73: Every six months, or at least every year, Congress shall publish the condition of its funds, expenses, debts, revenues, expenditures, and resources with the proper distinction of the different branches and agencies from which such are derived and the objects to which they have been applied; and from time to time Congress shall also print its acts and resolutions so far as can be done without danger.

Article 74: Nothing contained in this Constitution (*Acta*) may be revoked without the express consent of the Provinces, and they must be heard in this connection the same as they have been and are going to be heard in connection with the sanction [of this Constitution]; and no action taken to the contrary shall have any force or authority since such is to be considered as contrary to their express and declared will.

Article 75: Should matters of grave importance arise which may not be comprehended in the covenants of this federation or in its general rules and which require the consent of the Provinces, they shall be consulted provided there is no danger in such delay; but if there is danger in delay, whatever measures are considered judicious shall be provisionally taken, subject always to sanction by the said Provinces.

Article 76: Once the covenants of this Union are accepted, no Province shall refuse to carry them into effect, and it may be compelled

to abide by them by all the means at the disposal of Congress and the other Provinces; and the Provinces solemnly agree to fulfil this duty without any excuse, to which they pledge their honor and good faith.

Article 77: The present agreement shall be ratified or sanctioned by the Provinces through their legislatures, councils, or provisional governments fully and duly authorized to do so; and the same procedure shall be observed in the future for whatever may arise.

Article 78: The Provinces or their representative or legislative bodies shall, in the shortest possible time, give their ratification, approval, or observations upon this agreement in general or upon any article or articles in particular; but as in the meantime we are pressed by circumstances, and as all or almost all the Provinces which have been able to express themselves freely have declared their determination to be united under principles which they have agreed to be those our situation imperiously requires, which are the only ones that can save us, which are those adopted and followed by the wisest nations and are the basis of their felicity, the present Deputies shall continue to carry out the purposes of their powers and instructions by forming themselves into a Congress and working for whatever they consider proper for the common welfare and security.

Done in the Convention of Deputies in Santafé de Bogotá on the 27th day of November in the year of our Lord 1811.

José Manuel Restrepo, Deputy for the Province of Antioquia.

Henrique Rodríguez, Deputy for the Province of Cartagena.

Manuel Campos, Deputy for the Province of Neiva.

Camilo Torres, Deputy for the Province of Pamplona.

Joaquín Camacho, Deputy for the Province of Tunja.

José Manuel Restrepo, Secretary.

CONSTITUTION
OF THE
REPUBLIC OF COLOMBIA
(Constitution of 1821)

Constitution of 1821

HISTORICAL BACKGROUND

ALTHOUGH AT THE TIME the Constitution of 1811 was put into force much of New Granada had been wrested from the royalist forces, in some parts of the country the forces of the king were still in control, and there were royalist sympathizers throughout the country. A second obstacle to the establishment of a stable independent government was the ever-mounting hostility between the federalists and centralists. The bitterness between these republican factions was a constant source of strength to the royalists. By 1813 the situation was critical. The government of Cundinamarca was constantly at odds with the government of the union, to their mutual debilitation. As long as Cundinamarca, the most important province in the country, remained aloof, there was no hope of a successfully operating union in New Granada. But before discussing the ultimate outcome of this contest it is necessary to go back a bit.

In November, 1812, Bolívar landed in Cartagena. He had been forced to leave Venezuela as a result of the capitulations between Monteverde and Miranda. As soon as he arrived he joined with the republican forces of New Granada. His first contribution to the struggle in this country was in opening up the Magdalena River. This important communication-way had been controlled by the Spanish forces. Having accomplished the freeing of the river, he prepared to return to Venezuela to liberate that country. He started for Venezuela in May, 1813, at the head of a force made up of men furnished by the union and by Cundinamarca. Before he left he took an oath to obey the government of the United Provinces of New Granada. In other words, this was a New Granadine effort to liberate Venezuela. Bolívar's campaign in Venezuela had a great measure of initial success, which was followed, however, by an irresistible royalist reaction. Defeat of the patriot forces at Urica sealed the fate of Venezuela for the time being, and Bolívar once more had to flee to New Granada.

In the meantime the Congress of the union in New Granada had come to the end of its patience with Cundinamarca. When Bolívar returned he was put in command of a force which he led into Cundinamarca to force that province's adhesion to the union. On December 12, 1814, Cundinamarca submitted and entered the union. The

government of the union then moved to Santafé (Bogotá), the capital of Cundinamarca, on January 23, 1815.

By the following July the Spanish reconquest of New Granada had got under way. King Charles V had sent his *Pacificador*, General Pablo Morillo, to re-establish his sovereignty in New Granada and Venezuela. The expedition left Cádiz, Spain, early in 1815 and arrived off the coast of Venezuela in April of that year. Morillo landed near Cartagena in New Granada on August 20 and opened his campaign of reconquest by instituting a cruel blockade of that city. Morillo went from one success to another until finally on April 21, 1816, the Congress of the union was dissolved and the government fled before the Spaniard. The republic's inability to stop the Spanish forces was in large measure directly due to the internal dissensions which prevented the patriots from offering a united and determined front to the enemy. Morillo gave the *coup de grâce* to the republic by winning the battle of La Plata on July 10, 1816, and the reconquest was complete. It is beyond the scope of this introduction to set forth the story of the "pacification" of New Granada by the Spaniards. They held sway throughout New Granada from 1816 until 1819, when Bolívar returned to bring permanent independence and freedom to that country.

Back in May of 1815 Bolívar had left New Granada as a result of difficulties with the government of the Province of Cartagena. He went to Jamaica. After a while there he returned to Venezuela to renew the fight with the Spanish forces of occupation. Under his leadership the patriot forces achieved such a degree of success that by February 15, 1819, a congress was established in Angostura to govern that part of Venezuela which had been liberated. It was under the authority of this government that Bolívar set out on his famous march over the Andes in June of 1819 to liberate New Granada. This campaign reached its climax in the battle of Boyacá (August 7, 1819), which broke the back of royalist resistance. As a result of the battle eight provinces were liberated: Santa Fé, Tunja, Socorro, Pamplona, Neiva, Mariquita, Antioquia, Chocó, and most of Popayán.

By a decree dated September 11, 1819, Bolívar set up a provisional government for the liberated provinces of New Granada. In this decree it was stated that the Congress in Venezuela, under whose authority he had invaded New Granada, was "now the depository of the national sovereignty of Venezuelans and Granadines." In other words, the two countries were one, one by virtue of the fact that the army of one

had liberated the other. The time had come to provide a constitutional basis for this *de facto* situation. A committee of the Congress at Angostura, composed of representatives of both countries, presented a project of union, which was adopted on December 17, 1819. This law united the two countries and gave the new state the title of Republic of Colombia.¹

The law of union envisaged the inclusion of Ecuador when that country should become liberated from the Spanish government. It further provided that a constituent assembly should be elected for the purpose of drawing up a constitution. The constituent assembly was to meet in Cúcuta on January 1, 1821, but conditions were such that it could not begin its labors until March 6, 1821.²

The new constitution was adopted on August 30, 1821.

POLITICAL ORGANIZATION

Bolívar had always favored a strong centralized or unitary government. When he had first landed at Cartagena in November of 1812, he had given utterance to the conviction of all antifederalists in New Granada when he said, "I feel that so long as we do not centralize our governments, our enemies will have the most complete advantage." When the Constitution of 1821 was adopted, Bolívar's influence and prestige were at the zenith. This fact, combined with the still fresh memory of the federal union's failure to protect the country from Spanish reoccupation, made it inevitable that a unitary republic should have been desired and established. The Constitution of 1821 set up such a republic.

Under the provisions of this constitution the territory of the republic was to be divided into Departments, the Departments into Provinces, the Provinces into Cantons, and finally the Cantons into Parishes (Art. 8). It is to be noted that the principal subdivision is the Department and not the Province, which to the federalist was the natural subordinate area. Department boundaries were of necessity more arbitrary and hence less natural than the old provincial boundaries. In time, as we shall see, the people of Colombia abolished Provinces entirely from their governmental organization. In 1821, however, and for some time thereafter, a compromise had to be made with federalist sentiment if it was no more than retaining the Provinces as an integral if subordinate part of their governmental organization.

¹ For text of the law of union, see Pombo and Guerra, *op. cit.*, II, 695-699.

² Pombo and Guerra (*op. cit.*, II, 703) state that the assembly was installed on March 6, 1821. Henao and Arrubla (*op. cit.*, p. 351) state that it was installed on May 6, 1821.

Each Department was to be governed by an official known as the Intendant. The constitution clearly indicates that he was a creature of the central government deriving his powers from that government. Article 151 states that he "is subject to the President of the Republic, whose natural and immediate agent he is." His powers were to be determined by law of Congress. This official was appointed by the President with the consent of the Senate (Art. 152).

It was provided that the Provinces were to be governed by an official known as the Governor, who was "subordinate to the Intendant of the Department, and with such powers as the law shall determine." He also was appointed by the President with the consent of the Senate (Art. 153).

As to the municipalities, it was provided that "Congress shall regulate their number, boundaries, and powers as well as anything else which may be conducive to their better administration" (Art. 155).

Thus it can be seen that all levels of government were subordinate to and dependent upon the central government. The President and Senate chose the heads of these subordinate governments. Congress had the constitutional authority to define their powers and functions. In other words, the people living within the jurisdiction of any of the subordinate governments had no voice in selecting the heads of the subordinate governments, nor did they have anything to say directly as to what functions they were to perform. There were no "reserved powers" of any kind.

Under the terms of the Constitution of 1821, the people voted for only one class of public officials, i.e., the Electors. The President, Vice-President, Senators, and Representatives were all elected indirectly by the people acting through the Electors (Art. 34). Electors were chosen in the several Provinces on the basis of population (Arts. 19 and 20). At certain times, specified in the Constitution (Art. 31), the Electors of each Province met as a corporate body known as the provincial Electoral Assembly to elect the above-mentioned officials.

Indirect election of government officials was not the only limitation upon suffrage. The Constitution of 1821 also provided for what in these times would be considered stringent voting qualifications. In addition to the usual qualifications of age and citizenship, the individual had to meet a property qualification or be engaged in a business or profession. He also had to know how to read and write (Art. 15).

Congress was bicameral in organization. In the Senate the Departments were equally represented, each being entitled to four Senators (Art. 93). It could be argued that this was an element of federal-

ism. At the same time, one should not lose sight of the fact that the Departments were arbitrary subdivisions of the national territory, and as such they excited no local sympathies and were not based on local loyalties. In other words, one need not feel irresistibly driven to the conclusion that equality of representation in the Senate constituted a federal element since that equality was departmental and not provincial in its nature.

The Province was the area unit for the election of members of the House of Representatives. The number of Representatives to which each Province was entitled was based on the population of the Province in accordance with a ratio prescribed in the constitution (Arts. 85 and 86).

The four Senators representing any given Department were elected by the Electoral Assemblies of the several Provinces which went to make up that particular Department. Representatives, however, being elected on a provincial basis, were chosen by the Electoral Assembly of the Province they represented.

All the provincial Electoral Assemblies throughout the country voted for the President and Vice-President of the Republic. The distribution of electoral votes for the election of the President of the United States of America is federal in essence in that it is based on the States' congressional representation. That is to say, it is a compound of two bases: the basis of equality in the Senate and the basis of population in the House of Representatives. But even though there was equality of representation in the Senate of Colombia, as there is in the Senate of the United States of America, the election of the President of Colombia had no element of federalism in its nature. The distribution of electoral votes for the election of the President of Colombia was not on the basis of departmental or provincial representation in the Congress. The number of Electors was determined exclusively by the population of the several Provinces.

The judicial officers of the Republic were appointed. Justices of the Supreme Court were appointed by the President and the Congress, the two Houses of the latter acting independently of each other in this matter (Art. 142). Judges of the other courts were appointed by the President and the Supreme Court (Art. 148). The court system was composed of three grades of courts. There was a High Court of Justice composed of "at least five Justices" (Art. 140). District courts of second instance, known as Superior Courts, were provided for in Article 147, and inferior courts of first instance in Article 149.

In concluding this introduction, comment should be made upon

several innovations in the executive branch of government. An advisory body, known as the Council of Government, was provided. This council was composed of the Secretaries of State, one Justice of the High Court of Justice, and the Vice-President, who was the presiding officer of the council (Art. 133). The constitution required that the President consult this council in all matters referred to in Articles 46 and 119-128 of the constitution, "as well as all other matters of importance, but he shall not be bound by the advice given" (Art. 134).

A form of ministerial responsibility is also to be found in the Constitution of 1821. Article 138 provides: "Each Secretary is the regular and indispensable agency through which the Executive issues orders to subordinates. Any order not authorized by the proper Secretary shall not be executed by any tribunal or by any public or private person."

"In cases of internal strife and armed commotion endangering the security of the Republic, and in cases of unexpected armed invasion," the President, with the previous consent of the Congress, was constitutionally empowered to "take whatever extraordinary measures the case may require and which may not be comprehended within the normal sphere of his power" (Art. 128).

The powers of Congress and of the President defined and provided for in this constitution are the usual ones to be found in a national constitution. In view of the fact that there is nothing unique or unusual in them, it would seem that no further comment need be made here.

A translation of the text of the *Constitution of the Republic of Colombia*, herein referred to as the Constitution of 1821, follows.

CONSTITUTION
OF THE
REPUBLIC OF COLOMBIA

In the Name of God, Author and Legislator of the Universe,

We, the Representatives of the People of Colombia in Congress assembled, complying with the wishes of our constituents to establish the fundamental rules of our Union and to establish a form of government which will insure the benefits of liberty, property, and equality in so far as it is possible to a Nation beginning its political career and still struggling for its independence, agree to and hereby enact the following

CONSTITUTION
TITLE I

THE COLOMBIAN NATION AND COLOMBIANS

SECTION I

THE COLOMBIAN NATION

Article 1: The Colombian Nation shall be forever essentially and irrevocably free and independent of the Spanish Monarchy and of all other foreign power and domination; and it is not, and shall never be, the patrimony of any family or individual.

Article 2: Sovereignty resides essentially in the Nation. Magistrates and government officials, whatever may be the nature of their authority, are its agents, and they shall be responsible to it for their public conduct.

Article 3: It is the duty of the government, by wise and just laws, to protect the liberty, security, property, and equality of all Colombians.

SECTION 2

COLOMBIANS

Article 4: The following are Colombians:

(1) All persons born free in the territory of Colombia, and children of the same;

(2) Those who were established in Colombia at the time of her political transformation, provided they continue faithful to the cause of independence;

(3) Those who, not being born in Colombia, obtain letters of naturalization.

Article 5: It shall be the duty of each Colombian to live in submission to the Constitution and laws, to respect and obey the authorities, to contribute to the public expenses, and to be ready at all times to serve and defend the fatherland, even at the sacrifice of property and life if that be necessary.

TITLE II

THE TERRITORY AND GOVERNMENT OF COLOMBIA

SECTION I

TERRITORY OF COLOMBIA

Article 6: The territory of Colombia is the same as that which comprised the former Viceroyalty of New Granada and the Captaincy-General of Venezuela.

Article 7: People within the territory mentioned who are still under the Spanish yoke shall form a part of the Republic with equal rights and representation at whatever time they are liberated.

Article 8: The territory of the Republic shall be divided into Departments, the Departments into Provinces, the Provinces into Cantons, and the Cantons into Parishes.

SECTION 2

GOVERNMENT OF COLOMBIA

Article 9: The Government of Colombia is a popular representative one.

Article 10: The people shall not of themselves exercise any other attribute of sovereignty than that of preliminary elections, nor shall they entrust the exercise thereof to any single person. For purposes of administration the supreme power shall be divided into the Legislative, Executive, and Judicial.

Article 11: The power to enact laws belongs to Congress, the power to execute them to the President of the Republic, and the power to apply them in civil and criminal cases to the tribunals and courts.

TITLE III

PARISH AND ELECTORAL ASSEMBLIES

SECTION I

PARISH ASSEMBLIES AND THE CANVASS OF THEIR ELECTIONS

Article 12: In each Parish, regardless of the size of its population,

a Parish Assembly shall meet on the last Sunday in July every four years.

Article 13: The Parish Assembly shall be composed of the voters in good standing in the Parish, and it shall be presided over by the Judge or Judges therein, assisted by four persons of good reputation having the qualifications of a parochial voter.

Article 14: Without the necessity of awaiting any orders, the Judges shall convoke the Assembly on the day prescribed by the Constitution.

Article 15: To be a parochial voter it is necessary:

- (1) To be a Colombian;
- (2) To be married or twenty-one years of age;
- (3) To know how to read and write; but this qualification shall not be obligatory until the year 1840;
- (4) To possess real property of an unencumbered value of one hundred pesos. In default of this, to be engaged in some business, trade, profession, or useful industry, having a house or place of business and not being dependent upon another as a day laborer or as a servant.

Article 16: Rights as a parochial voter may be lost:

- (1) By accepting employment from another government without the permission of Congress while holding a position of profit or confidence in the Colombian Government;
- (2) For having been sentenced to corporal punishment, unless restored to citizenship;
- (3) For having sold one's vote or for having bought the vote of another for himself or for a third party in the primary [Parish] Assembly, the Electoral Assembly, or in any other.

Article 17: Rights as a parochial voter may be suspended:

- (1) In case of mental derangement;
- (2) For being a declared bankrupt or vagabond;
- (3) For persons on trial, until declared innocent or sentenced to a noncorporal punishment;
- (4) In cases of indebtedness to the public treasury after the time for payment has expired.

Article 18: The function of the Parish Assembly is to vote for the Elector or Electors to which the Canton is entitled.

Article 19: Provinces entitled to only one Representative shall elect ten Electors chosen by distribution among the Cantons in accordance with their population.

Article 20: Provinces entitled to two or more Representatives shall choose Electors in every Canton in the Province, and each Canton

shall elect one Elector for every four thousand persons and another for a remainder of three thousand. Every Canton, regardless of population, shall nevertheless choose one Elector.

Article 21: To be an Elector, it is required:

- (1) To be a duly qualified parochial voter;
- (2) To be able to read and write;
- (3) To be twenty-five years of age and a resident of one of the Parishes of the Canton;

(4) To possess real property of an unencumbered value of five hundred pesos, or to have an employment yielding an annual income of three hundred pesos, or to be in possession of property yielding an annual income of three hundred pesos, or to practice some profession or be the holder of a scientific degree.

Article 22: Each parochial voter shall vote for the cantonal Elector or Electors by stating publicly the names of the citizens, inhabitants of the same Canton, whom he prefers, and such vote shall be promptly entered in his presence in the registers kept for that purpose.

Article 23: All questions relative to qualifications and procedure in parochial voting, as well as all complaints on the subjects of collusion or bribery, shall be decided by the Judges and their assistants, and their decision shall, for the time being, be carried into effect with the right of appeal to the Council (*Cabildo*) of the Canton.

Article 24: Elections shall be public, and no one bearing arms may attend them.

Article 25: Elections shall be open for eight days, at the end of which the Assembly shall be considered dissolved; and any action not prescribed by the Constitution or law which may be taken is not only null, but an offense against the public security.

Article 26: As soon as the elections are concluded, the Judge or Judges who have presided over the Assembly shall transmit to the Council (*Cabildo*) the sealed register of elections for the Parish.

Article 27: As soon as the returns of parochial voting have been received, the Council (*Cabildo*) shall meet in public session under the presidency of one of the *Alcaldes ordinarios*,¹ or in his absence, one of the *Regidores*.² In the presence of the Council (*Cabildo*), the returns shall be opened and lists of all the votes shall be compiled and entered in the register.

Article 28: Citizens who obtain the greatest number of votes

¹ This official is roughly comparable to a justice of the peace or municipal judge.

² This official was a member of the *Cabildo* or Council.

shall be declared to be constitutionally chosen Electors. In case of a tie, it shall be decided by lot.

Article 29: The Council (*Cabildo*) of the Canton shall send the returns to the capital of the Province, and shall promptly notify the persons elected in order that they may be present in the capital on the day appointed by the Constitution.

SECTION 2

THE PROVINCIAL ELECTORAL ASSEMBLIES

Article 30: The Electoral Assembly shall be composed of the Electors chosen in the Cantons.

Article 31: On the first of October in every fourth year, the Electoral Assembly shall meet in the provincial capital and shall proceed to effect all elections assigned to it, provided two thirds of the Electors are present. The Council (*Cabildo*) of the capital shall preside until the Assembly has elected from among its members a president, who shall be the person receiving the greatest number of votes.

Article 32: Articles 24 and 25 shall apply to Electoral Assemblies.

Article 33: The term of office for Elector shall be four years. Vacancies shall be filled, when this is necessary, by those having the next highest number of votes.

Article 34: The Electoral Assemblies shall vote for:

- (1) The President of the Republic;
- (2) The Vice-President of the same;
- (3) The Senators of the Department;
- (4) The Representative or Representatives of the Province.

Article 35: The votes cast in these four kinds of elections shall be entered in four different registers, and the Electoral Assembly shall canvass the last-mentioned election.

Article 36: To be elected Representative of a Province it is necessary to obtain a majority of the votes; that is, one vote more than one half of the votes of all the Electors attending the election.

Article 37: Representatives shall be chosen one by one in a continuous session, and those obtaining the said majority shall be declared elected. If no one obtains it, the two having the greatest number of votes shall be voted upon, and he who receives the majority of votes cast shall be the Representative. Cases of tie shall be decided by lot.

Article 38: The election of the Representative or Representatives being completed, the President of the Electoral Assembly shall without delay notify those who are elected in order that they may attend the

next session; and the registers shall be sealed and sent to the House of Representatives.

Article 39: Under similar formalities, and without canvass by the Assembly, the registers of the voting for President and Vice-President of the Republic and for Senators shall be remitted to the Council (*Cabildo*) of the capital of the Department so that when the sealed registers of all the Provincial Assemblies have been received the same may be duly forwarded to the Senate in order that the formalities prescribed in Title IV, Section 5, may be carried into effect.

TITLE IV

THE LEGISLATIVE POWER

SECTION I

DIVISION, LIMITS AND FUNCTIONS OF THIS POWER

Article 40: The Congress of Colombia shall be divided into two Houses, which shall be the Senate and the House of Representatives.

Article 41: Laws may originate in either of the two Houses; each may propose amendments, alterations, and additions; each may refuse to consent by an absolute majority to laws proposed by the other House.

Article 42: Laws concerning imposts and taxes are excepted, however, and may originate only in the House of Representatives; but the usual right to add to, amend, or reject them is nevertheless reserved to the Senate.

Article 43: Bills entered for debate by the ordinary rules shall be debated on three separate days with an interval of at least one day between each discussion; without this procedure they may not become law.

Article 44: In cases of urgency, this formality may be dispensed with provided the House in which the bill originates has, after a discussion, declared that such urgency exists. The declaration of urgency and the reasons therefor shall be sent to the other House together with the bill. If the latter House does not hold that such urgency exists, it shall return the bill to the House of origin, where the bill shall then be debated in accordance with the normal formalities.

Article 45: No bill rejected by one House may be considered anew until the congressional session of the following year, but this shall not prevent some of the articles thereof from being part of other bills which have not been rejected.

Article 46: No bill constitutionally accepted for debate, debated, and passed by both Houses shall have the force of law until it has been signed by the Executive. Should the latter not deem the law expedient, he shall return the bill to the House of origin, along with his objections thereto, whether such arise out of any defect in the formalities or because of the substance thereof, within ten days after he shall have received it.

Article 47: The Executive's objections shall be entered in the Journal of the House in which the bill originated. If the members of that House are not satisfied with the objections submitted, they shall discuss the matter *de novo*; and should the bill be approved a second time by a two-thirds vote of the members present, it shall be sent, along with the Executive's objections, to the other House. The bill shall have the force of law, and must be signed by the Executive if the second House also approves it by a two-thirds vote of the members present.

Article 48: If, after the expiration of the ten-day period referred to in Article 46, the bill has not been returned with objections, it shall have the force of law and shall be promulgated as such, unless, during such period of time, the Congress shall have recessed or adjourned, in which case the objections shall be presented to the Congress at its next session.

Article 49: The Executive's sanction is also necessary in order to give effect to all other resolutions, decrees, statutes, and legislative acts of the two Houses; the following are excepted from this requirement: those concerning the opening and closing of the session, those decrees requesting reports or setting up committees concerning congressional duties, election of congressional officials, orders issued for filling vacancies which may occur in the two Houses, rules for debate and internal order, the punishment of members as well as those who may be wanting in respect due such members, together with all other acts in which the concurrence of both Houses is not necessary.

Article 50: Bills which have been passed by both Houses under conditions of urgency shall be sanctioned or returned by the Executive within two days without any Executive reference to the condition of urgency.

Article 51: In transmitting bills and resolutions from one House to the other or to the Executive, express mention shall be made of the days on which they were debated, the date of passage, and in cases of decisions of urgency, an exposition of the reasons motivating such decision. Whenever any of these requisites is omitted, the bill or resolution shall be returned within two days to the House in which such

omission has occurred, or to the House of origin if it occurred in both.

Article 52: Whenever a bill is to be sent to the Executive for his sanction, it shall be drawn up in duplicate and read before both Houses. Both originals shall be signed by the Presidents and Secretaries of the two Houses, and then it shall be carried by a committee to the Executive.

Article 53: A law being sanctioned or objected to by the Executive in accordance with Article 46, shall be returned along with the presidential decree to the two Houses and to the Secretary of the department (*despacho*) concerned in order that a record of that fact may be made. The original bill shall be kept in the archives of the House of origin.

Article 54: In promulgating legislation the following formula shall always be used: *The Senate and the House of Representatives of the Republic of Colombia, in Congress assembled, etc., decree:*

SECTION 2

SPECIAL POWERS OF CONGRESS

Article 55: The powers belonging exclusively to Congress are:

(1) Annually to vote appropriations with regard to the budget submitted by the Executive;

(2) To enact necessary measures for the preservation, administration, and alienation of the national property;

(3) To establish all taxes, duties, and contributions; to watch over expenditures and receive an accounting thereof from the Executive or any other officer of the Republic;

(4) To contract debts on the credit of Colombia;

(5) To establish a national bank;

(6) To determine and make uniform the value, weight, type, and denomination of money;

(7) To fix uniform weights and measures;

(8) To create the Courts of Justice and the inferior courts of the Republic;

(9) To create or abolish public offices and fix, diminish, or augment the salaries therefor;

(10) To enact naturalization laws;

(11) To grant rewards to persons who have performed great services for Colombia;

(12) To decree public honors to the memory of great men;

(13) To decree the conscription and organization of the Army, determining its size in time of peace and war, and to fix the period of service;

(14) To provide for the construction and equipment of the Navy, and also to increase or diminish it;

(15) To establish regulations for the governance of the land and sea forces;

(16) To declare war on the basis of information furnished by the Executive;

(17) To instruct the Executive to negotiate peace;

(18) To give consent and approval to treaties of peace, alliance, amity, commerce, neutrality, and any others which have been concluded by the Executive;

(19) To provide by law for public education, the advancement of science and art, institutions of public utility, and to grant for a limited time exclusive privileges for their support and encouragement;

(20) To grant general pardons for grave reasons of public convenience;

(21) To select the seat of government and change it when necessary;

(22) To fix the boundaries of the Departments, Provinces, and other territorial divisions of Colombia as may be necessary for the improvement of administration;

(23) To allow or refuse the passage of foreign troops through the territory of Colombia;

(24) To grant or refuse permission to squadrons of a foreign state to remain in the ports of Colombia for more than a month;

(25) To grant, during the present War of Independence, to the Executive those extraordinary powers deemed indispensable in those places within the area of military operations, as well as in those places recently liberated from the enemy, but defining them as clearly as possible and circumscribing the time of their operation to such as shall be absolutely necessary;

(26) To enact laws and other legislative measures of whatever nature may be necessary as well as to amend, add to, or repeal existing legislation. The Executive may lay before Congress any matter for its consideration, but never in the form of a law.

SECTION 3

FUNCTIONS AND PREROGATIVES COMMON TO BOTH HOUSES AND THEIR MEMBERS

Article 56: Each House may adopt rules for the regulation of its sessions, debates, and deliberations. They may punish any member

for violation of said rules by imposing such penalties as are established, even to the point of expelling members and declaring them ineligible to hold any office of trust or honor in the Republic when such is decided by a two-thirds vote of the members present.

Article 57: Neither House may open its sessions without the attendance of an absolute majority of its members; but in any case, those members present, regardless of their number, may meet and compel the absent members to attend in such manner and under such penalties as the Houses themselves shall establish.

Article 58: The session having begun, the attendance of two thirds of the members present [in the capital] shall be enough for the continuation of the session, provided the said two thirds are never less than two thirds of an absolute majority.

Article 59: The Houses shall have the exclusive right to regulate the internal conduct of the same as well as regulate anything outside the Houses that may be necessary for the free exercise of their functions. In pursuance of this right, they may punish, or cause to be punished, with such penalties as they may deem proper, anyone wanting in the respect due them, or anyone who may conspire against them as a body or against the immunities of their individual members, or who may in any other manner disobey or embarrass their orders or deliberations.

Article 60: The sessions of both Houses shall be public; however, they may be secret when deemed necessary.

Article 61: The proceedings of each House shall appear in a journal along with a record of the debates and resolutions which shall be published from time to time, except such matters as may be considered secret; and whenever it shall be requested by one fifth of the members present, the votes of each member on any motion or resolution shall be recorded.

Article 62: Each House shall elect from among its members a President and a Vice-President whose terms shall be one year, from one ordinary session to the next; and they shall choose a Secretary either from among the membership or a person not a member. The Houses shall also appoint other officials deemed necessary, and fix their remuneration.

Article 63: Communications between the Houses and the Executive, or between themselves, shall be made through the Presidents or through committees.

Article 64: Senators and Representatives represent the Nation and not the Department or Province in which they are chosen; they may

receive neither orders nor instructions from the Electoral Assemblies, which may only present petitions to them.

Article 65: The following may be neither Senators nor Representatives: the President and Vice-President of the Republic, Justices of the High Court of Justice, Secretaries of State, Intendants, Governors, and any other officers so prohibited by law; other officers may serve provided they discontinue the personal performance of their duties during the sessions. Whenever a Senator or Representative is appointed to another public office, it shall depend upon his own decision whether he accepts or refuses it.

Article 66: Members of Congress shall enjoy immunity of person and property during the sessions and in going to and coming from the same except in cases of treason or other grave crimes against the public order; they are not responsible before any other authority or at any time for their speeches or opinions uttered in the Houses.

Article 67: Senators and Representatives shall receive from the National Treasury compensation determined by law and calculated according to the time spent in coming to the sessions and returning home therefrom.

SECTION 4

TIME, DURATION, AND PLACE OF CONGRESSIONAL SESSIONS

Article 68: Congress shall meet each year, the ordinary session beginning January 2.

Article 69: Each ordinary session of the Congress shall last ninety days. In case of necessity it may be prolonged as much as thirty days more.

Article 70: Both Houses shall hold their sessions in the same Parish; while in session, neither shall be able to suspend its sessions for more than two days or move to another place without mutual consent; but having agreed on a change, should they differ as to time and place, the Executive may effect a compromise between the two extremes.

SECTION 5

ELECTIONS AND ELECTORAL CANVASSING BY CONGRESS

Article 71: In election years Congress shall assemble in the Senate chamber; in its presence the election returns for President and Vice-President of the Republic and for Senators of the Departments shall be opened and lists made of all the votes of the Electoral Assemblies, which shall be entered in a register for each class of election. The can-

vass shall be made publicly by four members of Congress and the secretaries.

Article 72: In order to be elected President of the Republic a candidate must receive two thirds of the votes of the Electors who were present at the Provincial Assemblies. He who has obtained this majority shall therefore be declared President.

Article 73: Whenever the aforesaid majority is not obtained, Congress shall proceed to choose a President from among the three having the highest number of votes. In this election, he who obtains two thirds of the votes of the members present shall be President of the Republic.

Article 74: If no one obtains the necessary majority in said congressional voting, Congress shall then confine its voting to the two receiving the greatest number of votes in the preceding balloting.

Article 75: The election of the President shall take place in a single sitting, which shall be a permanent one.

Article 76: The election of the Vice-President of the Republic shall follow the same procedure employed in the election of the President.

Article 77: The Congress shall declare to be Senators those who have obtained an absolute majority of votes of the Electors of each Department participating in the election.

Article 78: If some fail to obtain the requisite majority, Congress shall nominate, from among those having the most votes, three times as many candidates, or as close thereto as possible, as there are vacancies to be filled. Having done this, Congress shall proceed to elect, one by one, the necessary number of persons from this list. If in employing this procedure no election can be made, the formalities prescribed in Article 74 shall be followed.

Article 79: In cases of doubt or tie, the election shall be decided by lot.

Article 80: When the seat of any Senator or Representative becomes vacant because of death, resignation, expulsion, or other cause, such vacancies shall be filled by Congress, choosing one from among those persons appearing in the Registers of the Electoral Assemblies who have obtained the greatest number of votes; but if this number should not appear in the Registers, the respective House shall issue orders for another person to be chosen in the manner prescribed in this Constitution. The term of office of such person shall last only until the next ordinary election.

Article 81: If the same person should be elected by the Department

in which he was born and by the Department in which he resides, or by the Province in which he was born and the Province in which he resides, the election by his jurisdiction of birth shall prevail.

Article 82: Congress shall notify those elected President, Vice-President, and Senator in order that they may enter upon their duties on the appointed day.

Article 83: For the first time, the present Congress shall choose the President, Vice-President, and Senators.

SECTION 6

THE HOUSE OF REPRESENTATIVES

Article 84: The House of Representatives shall be composed of the Representatives chosen in all the Provinces of the Republic in accordance with this Constitution.

Article 85: Each Province shall choose a Representative for each 30,000 persons; if after said calculation is made there remains a residue in excess of 15,000 persons, another Representative shall be chosen; every Province regardless of population shall choose at least one Representative. The present Congress shall fix by decree the number of Representatives to which each Province is entitled until a census of the population is taken.

Article 86: This proportion of one for each 30,000 persons shall continue to be the basis of representation until the number of Representatives equals 100; although the population should increase, the aforesaid number of Representatives shall not be increased, but the number of persons per Representative shall be increased to 40,000 persons. This latter proportion shall continue until the number of Representatives shall be 150; then, as in the preceding case, the proportion shall be raised to 50,000 persons per Representative. In every case one additional Representative shall be chosen for any residue which is more than one half the basic proportion.

Article 87: In addition to having the qualifications required to be an Elector, no person shall be elected Representative who does not possess the following qualifications:

- (1) To be a resident or native of the Province which elects him;
- (2) To have resided in the territory of the Republic for the two years immediately preceding the election; this requirement shall not exclude those absent in the service of the Republic or with permission of the Government, or those banished or fugitives from the country as a result of their devotion and service to the cause of independence;

(3) To be owner of landed property of an unencumbered value of two thousand pesos, or possess an annual income of five hundred pesos accruing from landed property, or be a professor of some science.

Article 88: Persons not born in Colombia, to be Representatives, must have resided eight years in the Republic and have ten thousand pesos' worth of real property. Persons born in any other part of the American territory which in the year 1810 was a dependency of Spain, and which has not since been united to some other foreign country, are excepted; in such cases, it shall be enough that such persons have four years' residence and five thousand pesos' worth of real property.

Article 89: The House of Representatives has the exclusive right to bring charges before the Senate against the President of the Republic, the Vice-President, and Justices of the High Court of Justice in all cases of conduct manifestly contrary to the welfare of the Republic, of their respective offices, or for grave offenses against the public order.

Article 90: Other Colombian officials are also subject to inspection by the House of Representatives, and it may bring charges before the Senate against such officials for neglect of duty or other grave crimes. This, however, does not diminish the power nor preclude other administrative chiefs and tribunals who, in the interest of better enforcement of the laws, may judge, dismiss, and punish their subordinates according to law.

Article 91: The term of office for Representatives shall be four years.

Article 92: To the House of Representatives belongs the power to pass upon the validity of the election of its members as well as their qualifications, together with the resolution of all questions arising in connection therewith.

SECTION 7

THE SENATE

Article 93: The Senate of Colombia shall be composed of Senators chosen in the Departments of the Republic in conformity with this Constitution. Each Department shall have four Senators.

Article 94: The term of office for Senators shall be eight years. The Senators of each Department shall be divided into two classes: those of the first shall vacate their seats at the end of four years, and those of the second class at the end of eight years, in order that there shall be an election of one half the Senate every four years. At its first meeting the Senate shall determine by lot the two Senators of each De-

partment whose terms of office are to close at the end of four years.

Article 95: In addition to possessing qualifications required for Electors, to be a Senator it is necessary:

(1) To be thirty years of age;

(2) To be a native or resident of the Department in which the election takes place;

(3) To have been resident in the territory of the Republic for the three years immediately preceding election under such exceptions as are enumerated in Article 87;

(4) To be owner of real property of an unencumbered value of four thousand pesos, or in default of this, an annual income of five hundred pesos accruing from landed property, or be a professor of some science.

Article 96: Persons not born in Colombia may not be Senators without a previous residence of twelve years and owning real property amounting to sixteen thousand pesos; those who are natives of any other part of the American territory which in the year 1810 was a dependency of Spain and which has not since been united to any foreign country are excepted; it is sufficient that such persons have a residence of six years and real property worth eight thousand pesos.

Article 97: The Senate has the special power to function as a court of justice to hear, judge, and sentence employees of the Republic against whom charges may be brought by the House of Representatives in those cases mentioned in Articles 89 and 90.

Article 98: In those cases in which the Senate is functioning as a court of justice, the House of Representatives may choose one of its members to act as prosecutor, and he shall proceed according to the orders and instructions which the House may communicate to him.

Article 99: The Senate shall proceed to try the case or appoint a committee of its members to do so, reserving the sentence which the Senate itself is bound to pronounce.

Article 100: Whenever any accusation has been admitted by the Senate, the person accused shall, *ipso facto*, be suspended from office; and the officer having the authority to do so shall in the meantime fill the vacancy.

Article 101: To pass sentence in such trials it is necessary that it be done by a two-thirds vote of the Senators present.

Article 102: The decisions of the Senate in such cases may not extend beyond depriving the convicted person of his office and declaring him ineligible to hold any other office of honor, profit, or confidence

in Colombia; such guilty person, however, shall remain liable to indictment, trial, sentence, and punishment according to law.

Article 103: In such cases as the Senate may desire, the President of the High Court of Justice or any of its members shall advise the Senate and interpret points of law.

Article 104: The decrees and sentences pronounced by the Senate in such cases shall be executed without the sanction of the Executive.

TITLE V

THE EXECUTIVE POWER

SECTION I

THE NATURE OF THE EXECUTIVE POWER

Article 105: The exercise of the Executive Power of the Republic shall belong to the President of the Republic of Colombia.

Article 106: To be President one must be a native-born citizen of Colombia and possess all the other qualifications required of Senators.

Article 107: The presidential term shall be four years, and no one is eligible for re-election without an intervening term.

Article 108: There shall be a Vice-President, who shall exercise the functions of President in case of death, removal, or resignation, until a successor shall be chosen, which shall take place at the next meeting of the Electoral Assemblies. He shall likewise exercise the same functions in case of absence, illness, or any other temporary incapacity of the President.

Article 109: The Vice-President of the Republic shall possess the same qualifications as the President.

Article 110: In the event the offices of President and Vice-President of the Republic are temporarily vacant, the President of the Senate shall assume the office; but when such vacancies are permanent, elections shall be held immediately in accordance with this Constitution.

Article 111: Any persons elected to the office of President or Vice-President other than at the normal constitutional time shall serve in that capacity only until the next ordinary meeting of the constitutional Assemblies.

Article 112: The President and Vice-President shall receive for their services such salaries as the law may assign, which may neither be increased nor be diminished while they are in office.

SECTION 2

FUNCTIONS, DUTIES, AND PREROGATIVES
OF THE PRESIDENT OF THE REPUBLIC

Article 113: The President is the head of the general administration of the Republic. The preservation of internal order and tranquillity as well as external security is especially committed to him.

Article 114: It is his duty to promulgate and command the execution and observance of the laws, decrees, statutes, and acts of Congress when, according to Section 1 of Title IV of this Constitution, they have force as such; and he shall issue regulations and instructions necessary for the execution of the same.

Article 115: He convokes Congress at the times appointed by this Constitution and at extraordinary times when any important consideration demands it.

Article 116: At proper times he issues all necessary orders for constitutional elections.

Article 117: Throughout the whole Republic he is the supreme commander of the land and naval forces, and is exclusively charged with their administration; but he may not command them in person without previously obtaining the consent of Congress.

Article 118: When, in accordance with the preceding article, he personally commands the forces of the Republic or any part of them, the functions of President shall by this fact alone devolve upon the Vice-President.

Article 119: He declares war in the name of the Republic after Congress has decreed it, and he then takes all preparatory measures.

Article 120: He concludes treaties of peace, alliance, amity, truce, commerce, neutrality, and all others with foreign princes, nations, or peoples; but, without the consent and approval of Congress, he may not give or deny ratification of treaties concluded by plenipotentiaries.

Article 121: With previous agreement and consent of the Senate, he appoints all ministers and diplomatic agents, and military officers holding the rank of colonel and above.

Article 122: When the Senate is in recess he may commission such officers when their appointment is urgent, said commissions being in force until the next ordinary or extraordinary session of the Senate, when they shall be confirmed in accordance with the preceding article.

Article 123: He also has the power to appoint all other civil and military officers the appointment of whom is not granted to some other authority by the Constitution or law.

Article 124: He shall see that justice is administered promptly and completely by the tribunals and courts of the Republic and that their sentences are executed.

Article 125: He may suspend from office officials who are incapable or delinquent in their duties; but he shall at the same time transmit information thereof to the tribunal having jurisdiction as well as the proceedings and documents pertinent to the case in order that a trial may take place in accordance with law.

Article 126: He may not deprive any individual of his liberty or inflict any punishment upon him. When the welfare and security of the Republic necessitate the arrest of anyone, the President may issue orders to that effect, but before the expiration of forty-eight hours he shall place the person arrested at the disposal of the competent tribunal or judge.

Article 127: In the interests of humanity when a motive sufficiently weighty requires it, he may commute a capital sentence provided the judges who handed down the same are agreeable thereto, whether he initiated it or did so at the suggestion of the said judges.

Article 128: In cases of internal strife and armed conflict endangering the security of the Republic, and in cases of unexpected armed invasion, he may with the previous consent of Congress take whatever extraordinary measures the case may require, which may not be comprehended within the normal sphere of his power. If Congress is not in session, he may act completely upon his own initiative; but he shall convoke Congress without delay in order to obtain its confirmation. This extraordinary authority shall be entirely limited in time and place where it may be indispensably necessary.

Article 129: The President of the Republic, at the opening of the annual session of Congress, shall send to both Houses a report on the political and military state of the Nation, and of its revenues, expenses, and resources, pointing out improvements and reforms which should be made.

Article 130: He shall also give each House any information requested, withholding, however, that of which the publication is not expedient at the time.

Article 131: As long as he is in office, the President of the Republic may be accused only before the Senate, and judged by it, in the cases mentioned in Article 89.

Article 132: The President may not leave the territory of the Republic during his term of office or for one year thereafter without permission of Congress.

SECTION 3

THE COUNCIL OF GOVERNMENT

Article 133: The President of the Republic shall have a Council of Government composed of the Vice-President of the Republic, one Justice of the High Court of Justice chosen by him, and the Secretaries of State.

Article 134: The President shall consult the Council in all matters referred to in Articles 46, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, as well as all other matters of importance, but he shall not be bound by the advice given.

Article 135: The Council shall keep a journal of its opinions and every year transmit to the Senate an exact copy thereof except for such matters as require secrecy.

SECTION 4

THE SECRETARIES OF STATE

Article 136: There shall be established five Secretaries of State: namely, Foreign Affairs, Interior, Finance, Navy, and War. It shall be lawful for the Executive temporarily to unite two ministries.

Article 137: It shall be lawful for Congress to make such alterations in the above number as experience may suggest or circumstances demand; the functions of each ministry shall be assigned by a particular regulation drawn up by the Executive and submitted to the Congress for its approval.

Article 138: Each Secretary is the regular and indispensable agency through which the Executive issues orders to subordinates. Any order not authorized by the proper Secretary shall not be executed by any tribunal or by any public or private person.

Article 139: It is the duty of the Secretaries of State, with the consent of the Executive, to give each House all the information concerning their respective ministries which Congress may request, either in writing or verbally, withholding only that which it is not expedient to publish.

TITLE VI

THE JUDICIAL POWER

SECTION I

POWERS OF THE HIGH COURT OF JUSTICE,
THE ELECTION AND TERM OF OFFICE OF ITS MEMBERS

Article 140: The High Court of Justice of Colombia shall be composed of at least five Justices.

Article 141: To be a Justice of the High Court of Justice it is necessary:

- (1) To have the qualifications of an Elector;
- (2) To be a lawyer in good standing;
- (3) To be thirty years of age.

Article 142: The Justices of the High Court of Justice shall be proposed in ternary by the President of the Republic to the House of Representatives. The House shall reduce this number to two and present them to the Senate, which body shall then choose the persons who are to compose the bench. The same procedure shall be followed in filling any vacancy occurring because of death, removal, or resignation. If the Congress is not in session, the Executive shall make temporary appointments until such time as the vacant places may be filled in accordance with the above formality. At the present time they shall be chosen by this Congress.

Article 143: The High Court of Justice shall:

- (1) Take cognizance of all cases affecting Ambassadors, Ministers, Consuls, or Diplomatic Agents;
- (2) Take cognizance of controversies arising out of treaties and negotiations entered into by the Executive;
- (3) Settle questions of competency which may arise between the Superior Tribunals.

Article 144: The law shall determine the stage, form, and cases in which the Court shall take cognizance of the above-mentioned cases, as well as all other civil and criminal matters which may be assigned to it.

Article 145: Justices of the High Court of Justice shall hold office during good behavior.

Article 146: At fixed periods to be determined by law, they shall receive such compensation for their services as may be assigned.

SECTION 2

SUPERIOR COURTS OF JUSTICE AND THE INFERIOR COURTS

Article 147: For the more prompt and easy administration of justice, Congress shall establish throughout the Republic such Superior Courts as it may deem necessary or existing circumstances may permit, assigning to each its territorial jurisdiction and the place in which it is to sit.

Article 148: The Judges of the Superior Courts shall be named by the Executive upon proposal in ternary by the High Court of Justice. Their term of office shall be that stated in Article 145.

Article 149: The Inferior Courts shall, for the present, continue under such regulations as shall be determined by a special law until Congress shall reform the administration of justice.

TITLE VII

INTERNAL GOVERNMENT OF THE REPUBLIC

SECTION I

ADMINISTRATION OF THE DEPARTMENTS

Article 150: Congress shall divide the territory of the Republic into six or more Departments for convenience and facility of administration.

Article 151: The political direction of each Department shall be in the hands of an official known as the Intendant, subject to the President of the Republic, whose natural and immediate agent he is. His powers shall be determined by law.

Article 152: Intendants shall be chosen by the President of the Republic in accordance with Articles 121 and 122. Their term of office shall be three years.

SECTION 2

ADMINISTRATION OF THE PROVINCES AND CANTONS

Article 153: In each Province there shall be a Governor entrusted with the immediate direction thereof and subordinate to the Intendant of the Department, and with such powers as the law shall determine. His term of office and manner of appointment shall be the same as those of the Intendants.

Article 154: The Intendant of the Department is the Governor of the Province in which the capital of the Department is located.

Article 155: The present Councils (*Cabildos*) and Municipalities of the Cantons shall continue as now established. Congress shall regulate their number, boundaries, and powers, as well as anything else which may be conducive to their better administration.

TITLE VIII

GENERAL PROVISIONS

Article 156: All Colombians have the right to write, print, and publish freely their thoughts and opinions without the necessity of examination, revision, or censorship by any authority prior to publication. But those who abuse this precious right shall suffer the penalties provided by law.

Article 157: The freedom possessed by all citizens to demand their rights before the depositaries of public authority with due moderation and respect shall never be impeded nor limited. On the contrary all, in accordance with law, shall find a prompt and sure remedy for injuries and losses suffered to their persons, property, honor, and reputation.

Article 158: Every man is presumed to be innocent until found guilty in accordance with law. If, prior to any declaration of guilt, it be necessary to arrest or confine him, no harsh measures shall be employed which are not indispensably necessary for confinement.

Article 159: In criminal matters no Colombian may be imprisoned unless indicted for an offense carrying corporal punishment.

Article 160: Any person may be arrested if taken *in flagrante delicto*, and all persons are authorized to seize him and take him before a judge in order that the provisions of the preceding article may be immediately carried into effect.

Article 161: In order that a citizen may be imprisoned, it is necessary:

(1) That there be an arrest order signed by the authority in whom the law entrusts this power;

(2) That the order expressly state the reasons for the arrest;

(3) That he receive notice thereof and a copy of the same.

Article 162: No warden or jailer may admit to or detain in prison any person unless he has received an order of arrest or commitment referred to in the preceding article.

Article 163: The warden or jailer may not prohibit the imprisoned person from communicating with any person whatsoever unless the order of commitment contains a clause forbidding such communication. The latter may not last more than three days; no chains or other such restraints shall ever be used unless expressly directed by the judge.

Article 164: The following are guilty of arbitrary detention and subject to the penalty thereof:

(1) Those who, without legal power, shall arrest or cause to be arrested any person whatsoever;

(2) Persons who, having said power, abuse it by arresting or causing to be arrested or keeping in confinement any person for reasons not provided by law, or contrary to the forms therein prescribed, or in places which are not publicly and legally known as prisons;

(3) Wardens or jailers who contravene the provisions of Articles 162 and 163.

Article 165: Whenever the causes for arrest, detention, or confine-

ment have ceased to exist, the prisoner shall be set free. Upon giving sufficient bail, the accused shall be put at liberty at any stage in the legal proceedings where it appears that corporal punishment shall not be applicable to his case. When testimony against the accused is being taken, which shall be done within three days, all documents and declarations of witnesses, together with their names, shall be read in full to him; and should the accused be unacquainted with such witnesses, all possible information concerning them shall be given him in order that he may ascertain who they are.

Article 166: No one may be judged by special commissions, but only by tribunals to whom the law has given cognizance of the case.

Article 167: No one shall be judged, much less punished, except by virtue of a law enacted prior to the commission of his crime and after being legally cited; no one shall be compelled under oath or any other constraint to give testimony against himself in a criminal action; nor shall persons bear witness against one another who are kin either by ascent or descent or relatives to the fourth degree of consanguinity or to the second degree of affinity.

Article 168: Any punishment or treatment in excess of the penalty provided by law is a crime.

Article 169: It shall be unlawful to enter the house of a Colombian except in cases determined by law and under the responsibility of the judge who issues the order.

Article 170: The private papers of citizens as well as their correspondence are inviolable; and it shall be unlawful to register, intercept, or examine them except in cases expressly prescribed by law.

Article 171: Every judge and tribunal shall pronounce sentence by citing the law or grounds applicable to the case.

Article 172: In no trial shall there be more than three instances; and the judges who participate in one shall never be allowed to sit in any appeal of the same suit.

Article 173: The penalty attaching to any crime shall never be made to apply to the family or children of the delinquent.

Article 174: No Colombian, except those in the Navy or Militia on active duty, shall be subjected to military law, nor shall he be made to suffer any of the penalties provided in that law.

Article 175: One of the first cares of Congress shall be to provide for jury trial in certain kinds of cases until the advantages of this institution become well known, at which time it shall be extended to all criminal and civil cases to which it is usually applied in other countries with all the forms adapted to this mode of procedure.

Article 176: The military, in time of peace, may not be quartered or lodged in the houses of private citizens without the consent of the owners; or in time of war, unless by order of the civil magistrates conformably to law.

Article 177: No one may be deprived of the least portion of his property, nor shall it be applied to public use without his own consent or that of the legislative body; whenever any legally determined public necessity demands that the property of any citizen be applied to such use, it presupposes the payment of a just compensation.

Article 178: No kind of labor, cultivation, industry, or commerce shall be prohibited to Colombians except such as are now necessary for the support of the Republic and which shall be declared free as soon as Congress deems it fit and proper.

Article 179: The establishment of entailed estates and every other description of entail is prohibited.

Article 180: No gold, silver, paper, or other equivalent for money shall be removed from the public treasury except for the objects and purposes designated by law; a statement and account of the receipts and expenditures of the public revenue shall be annually published for the information of the Nation.

Article 181: All titles of honor granted by the Spanish Government shall be abolished, and Congress may not grant titles of nobility or hereditary honors or distinctions or create any office or position whatsoever the pay or emoluments of which are intended to last any longer than the good behavior of the incumbents.

Article 182: No person holding a position of honor or confidence under authority of Colombia shall be able to accept any gift, title, or emolument from any king, prince, or foreign state without the consent of Congress.

Article 183: All aliens from any country whatsoever shall be admitted to Colombia; they shall enjoy in their persons and property the same protection as the citizens thereof so long as they obey the laws of the Republic.

Article 184: Those persons not born in Colombia who, during the War of Independence, have served with honor in one or more campaigns, or have rendered important services to the Republic are to be considered equal to natural-born citizens in respect to their eligibility for offices which do not require them to be natural-born Colombian citizens, provided they possess the necessary qualifications.

TITLE IX

THE OATH OF PUBLIC OFFICIALS

Article 185: No official of the Republic may exercise his functions without taking an oath to sustain and defend the Constitution and to execute faithfully and exactly the duties of his office.

Article 186: The President and Vice-President of the Republic shall take such oath in the presence of Congress, and it shall be administered by the President of the Senate. The Presidents of the Senate, House of Representatives, and the High Court of Justice shall take their oaths in the presence of their respective bodies; and the members of such bodies shall take theirs at the hands of their respective Presidents.

Article 187: The Secretaries of State, Judges of the Superior Courts of Justice, Intendants of the Departments, Governors of Provinces, Generals of the Army, and other principal officials shall take oaths before the President of the Republic, or before the person to whom this function is committed.

TITLE X

CONCERNING THE OBSERVANCE OF FORMER LAWS,
AND THE INTERPRETATION AND AMENDMENT OF THIS CONSTITUTION

Article 188: Laws hitherto existing are hereby declared to be in full force in all matters and cases not directly or indirectly repugnant to this Constitution or to the decrees and laws which Congress may enact.

Article 189: Congress shall have power to resolve doubts which may arise concerning the meaning of any of the articles of this Constitution.

Article 190: At any time, should two thirds of both Houses deem it expedient to alter or amend any of the articles of this Constitution, it shall be lawful for the Congress to propose the same so that Congress may consider it *de novo* after the membership of both Houses has been renewed by at least one half of those members who proposed the amendment; and if the same be ratified by two thirds of each House in accordance with the formalities prescribed in Section 1 of Title IV, the same shall be valid and form part of the Constitution; but the provisions contained in Section 1 of Title I and in Section 2 of Title II may never be amended.

Article 191: When all or the greatest part of that portion of the territory of the Republic which is now under Spanish domination shall

be so liberated as to be able to contribute through its representatives to the perfection of the edifice of our social well-being, and when after ten or more years of operation the advantages and disadvantages of this Constitution shall have been brought to light, a grand convention of Colombia shall be convoked by Congress and authorized to examine and amend the same in all its parts.

Done in the first General Congress of Colombia, signed by all Deputies present in the city of Rosario in Cúcuta on the 30th day of August in the Year of Our Lord 1821, and of Independence the eleventh.

President of the Congress: DOCTOR MIGUEL PEÑA

Vice-President of the Congress: RAFAEL, BISHOP OF MÉRIDA IN
MARACAIBO

Alejandro Osorio, Luis Ignacio Mendoza, Vicente Azuero, José Ignacio de Márquez, Diego Fernando Gómez, José Cornelio Valencia, Domingo B. y Briceño, Joaquín Borrero, Antonio María Briceño, Joaquín Fernández de Soto, José Antonio Borrero, Diego Bautista Urbaneja, Miguel de Zárraga, Manuel Benítez, José Antonio Yáñez, Andrés Rojas, Ildefonso Méndez, José F. Blanco, Pedro F. Carvajal, Miguel Domínguez, Dr. Ramón Ignacio Méndez, Bartolomé Osorio, Francisco de P. Orbegozo, Salvador Camacho, Juan Ronderos, J. Prudencio Lanz, Cerbeleón Urbina, Mariano Escobar, José Gabriel de Alcalá, José Antonio Paredes, José María Hinestrosa, J. Francisco Pereira, Sinforso Mutis, Juan Bautista Estévez, José Manuel Restrepo, Casimiro Calvo, Manuel María Quijano, Miguel de Tobar, José de Quintana y Navarro, José Ignacio Valbuena, Joaquín Plata, Miguel Ibáñez, Dr. Félix Restrepo, Francisco José Otero, Carlos Alvarez, Gabriel Briceño, Lorenzo Santander, Nicolás Ballén de Guzmán, Pedro Gual, Bernardino Tobar, Pacífico Jaime, Policarpo Uricoechea, Vicente A. Borrero, José A. Mendoza, Francisco Gómez, Francisco Conde.

Secretaries: *Miguel Santamaría and Antonio José Caro.*

CONSTITUTION
OF THE
REPUBLIC OF COLOMBIA
(Constitution of 1830)

Constitution of 1830

HISTORICAL BACKGROUND

THE HIGHLY CENTRALIZED form of government set up by the Constitution of 1821 was far from being unanimously accepted by the people of Colombia. Although the centralists were sufficiently numerous and influential to dominate the convention which drafted and adopted the constitution, the federalists were by no means routed or rendered inarticulate. Opposition was especially vigorous in Venezuela and in the southern part of the Republic. Nor was there absence of disapproval and opposition in the New Granada section of the Republic. However, conditions remained relatively quiet and stable until 1826, when the Páez rebellion brought the opposition definitely out into the open.

The first Congress elected in accordance with the provisions of the new constitution met in April, 1823. Nothing pertinent to the purposes of this introduction occurred in that session, or in the session of 1824. Bolívar was still in Perú fighting the Spanish forces with success. Great Britain recognized the new government; and in April, 1825, a treaty of friendship, commerce, and navigation was signed. A similar treaty with the United States of America was also ratified.

In the congressional session of 1825, legislation was passed which was a portent of events to come. It was a yielding to federalist pressure which could no longer be completely ignored. By 1825 it had become apparent that there was much dissatisfaction in many localities with the excessive centralism of the governmental organization. The act of March 8, 1825, was an effort to placate the anticentralist elements in the country. This legislation provided for the establishment of subordinate assemblies known as *Juntas de Provincia*, to which Congress granted some very limited powers of local government.¹

These *Juntas de Provincia* may not be considered as subordinate legislative assemblies. The limited powers granted them were powers of local administration, not of local legislation. That being the case, this concession to federalist sentiment was more one of appearance than of substance. The importance of the legislation does not lie in the fact that it was any basic concession to federalist pressure. Illusory as its power may have been from the federalist viewpoint, however, it did set up a provincial institution which was a rallying point for the federalists.

¹ José de la Vega, *La Federación en Colombia (1810-1912)* (Madrid, n. d.), pp. 106-107.

It was a very small but nonetheless important breach in the centralist wall.

Before a discussion is given of the important events of 1826, brief mention should be made of one phase of Bolívar's activity in the south, which, as we shall see, had important repercussions. When Bolivia was freed from Spanish domination, Bolívar drafted a constitution embodying his ideas of governmental organization. It was a strongly centralized government with certain important officials holding office for life, i.e., the President and the House of Censors, one of the three houses of the legislative branch of government.² The Bolivian people adopted this constitution. Bolívar thought he saw in the events of 1826 an opportunity to establish in Colombia a government similar to that of Bolivia. General José Antonio Páez, the military commander in the Venezuela section of the Republic, having been none too successful in executing certain draft legislation enacted in Bogotá, was charged by the House of Representatives before the Senate with insubordination. The Senate suspended Páez from office and ordered him to Bogotá for trial.

Ever since 1821 the anticentralists in Venezuela had looked to federalism as the best means of freeing themselves from domination by Bogotá. But as time went on, the conviction grew that only complete independence and separation would solve the problem to their satisfaction. By 1826 many were no longer federalists, but had become separatists. The disaffected elements in Venezuela saw in the attack upon Páez, their compatriot, a golden opportunity to bring matters to a head. They persuaded him not to go to Bogotá to defend himself. He kept his position as commander of the armed forces in Venezuela and declared himself in open rebellion against the national government. It soon became obvious that Páez had widespread support in this.

When news of Páez's rebellion reached Bolívar, he assumed that the Constitution of 1821 had in fact been abrogated. He felt that the propitious moment for putting his political theories into practice had arrived and sent several representatives to Colombia to prepare the way for the political transformation. Bolívar's hasty assumption that the government under the Constitution of 1821 was in its death throes and his precipitous action in offering such an extreme substitute, while bringing joy to his friends, struck fear to the hearts of all others. Many who suspected Bolívar of personal ambition looked upon the continuance of the constitution and its government as the best defense against the Liberator's ambition. Consequently, a strange alignment

² For text of this constitution, see Pombo and Guerra, *op.cit.*, II, 778-797.

of the people resulted. In supporting the constitution, the anti-Bolívar faction had to assume the designation of "centralists" at a time when the object of their apprehension was the greatest "centralist" of all. On the other hand the federalists and separatists throughout the country joined with Páez and Bolívar in the hope that these men would bring an end to the constitution and free them of domination by Bogotá. Bolívar's alternative of extreme centralization of power in a president with life tenure did not worry them, for they knew Bolívar would be the president.

This surprising alignment was not as absurd and inconsistent as it may appear at first glance. While Bolívar was on the stage of Colombian history, three groups were discernable. Bolívar had a personal following which out of devotion to him as a man and a leader could see only good in anything and everything he did. At the other extreme were his enemies, men willing to be known publicly as his opponents. Between these two groups was a third which considered Bolívar a great but nevertheless human man subject to the weaknesses of humanity. His enemies supported the Constitution of 1821 because Bolívar was opposed to it. His friends were opposed to the constitution for the same reason. There seems to be no question that Bolívar's friends were more numerous than his enemies, but in this crisis the middle group, believing Bolívar had overstepped himself this time, joined with his enemies to oppose the establishment of the principles of the Bolivian Constitution in Colombia. Thus the stage was set for his return.

Bolívar returned to Bogotá in November, 1826, as he apparently thought, to establish a government along the lines of the Bolivian government. But once in Bogotá he soon learned that the supporters of the Constitution of 1821 were too numerous. Being a practical as well as a patriotic man, he counseled the people to support the constitution until readjustments could be legally and peacefully made. He then proceeded to Venezuela to deal with Páez, and a possible civil war was averted.

Bolívar and Páez met in January, 1827. Out of personal regard for Bolívar, Páez agreed to discontinue his opposition. In return for this, Bolívar confirmed Páez as civil and military chief of Venezuela. Although peace seemed assured for the time being, the anti-Bolívar faction was skeptical and fearful.

The opposition party in Bogotá continued its attacks and criticisms in the press after the liberator had set out for Venezuela. At first the onslaught was veiled, but soon his policy, his conduct, and his ideas

were openly criticised. The principal themes of the writers were the life-presidency, the dictatorship, and the projected confederation of Colombia with Perú and Bolivia. The criticism and reproaches were greater when news of the pacification of Venezuela and the amnesty granted to Páez and his followers reached Bogotá. Bolívar's conduct was denounced as partial and improper by those who supported the existing institutions.³

The leader and symbol of this opposition was Santander, the Vice-President of the Republic.

It was obvious by now (1827) that something had to be done to stabilize the political situation in the country. The breach between the partisans and opponents of the Constitution of Cúcuta (1821) had become too wide to permit any hope that that constitution could long survive without major alterations. Feeling ran deep, and the two factions were led by strong and influential men, Bolívar and Santander. In its session of that year Congress passed a law calling for a national assembly to meet at Ocaña on March 2, 1828, for the purpose of amending the Constitution of 1821. The whole nation placed its hopes in this convention.

The national assembly did not open its sessions until April 9, 1828. It was soon clear that the majority of the members were jealous and distrustful of Bolívar. They proposed amendment after amendment designed to reduce the power of the Executive. For their part, the pro-Bolívar members naturally proposed amendments which would greatly increase the power of the Executive. Irritation and mutual distrust prevented any agreement, and matters went from bad to worse until, convinced of the futility of the struggle, Bolívar's supporters withdrew from the meeting early in June. Although the convention continued its session for a few more days, for all practical purposes this was the end. The end not only of the convention, but also the end of the Constitution of 1821, for Bolívar assumed extraordinary powers again and governed the country until the Constitutional Convention of 1830 was in session. This assumption of extraordinary powers came about in the following manner.

On June 13 the Intendant of Cundinamarca (General Pedro Alcántara Herrán), feeling that nothing worth while would come out of Ocaña, called upon the leading citizens of Bogotá to meet and take over the government. A meeting was held and a resolution urging Bolívar to return to Bogotá was adopted. Similar resolutions

³ Henao and Arrubla, *op. cit.*, pp. 392-393.

were adopted all over the country. Bolívar arrived in Bogotá June 24 and assumed the dictatorship proffered him.

Although it is not necessary for the purposes of this introduction to enter upon a detailed discussion of the events which transpired during the dictatorship, one decree should be briefly mentioned. On August 27, 1828, Bolívar issued a decree organizing his dictatorship and setting up the limitations within which he proposed to govern the country. These self-imposed limitations were designed to mitigate the rigors inherent in any dictatorship. He stated that the decree was to take the place of the constitution until 1830, when a constitutional convention would meet.⁴

Naturally, many were dissatisfied with Bolívar's assumption of extraordinary powers. When he categorically stated that the decree of August 27 was to replace the constitution, a little group of anti-Bolívar men concluded that the time had come to take decisive measures. An attempt was made upon his life on September 25, 1828, which is known in Colombian history as the "September Night." This audacious attack caused Bolívar to annul his decree; and, until he retired in 1830, he governed the country without reference to the restrictions which he imposed upon his dictatorship in the decree.

Unsettled conditions in Popayán and in Bolivia and the war with Perú contributed to the mounting confusion in Colombia. Deputies were elected, however, and the convention of 1830 became a reality. This constituent assembly, which began its sessions on January 20, 1830, is known in Colombian history as *El Congreso Admirable*. It drew up and adopted the Constitution of 1830.

On March 1, 1830, Bolívar resigned as President and retired to private life, leaving General Domingo Caicedo in charge of the government. Conditions in the south and in Venezuela prompted Caicedo to suggest that the government recognize Venezuela as independent and no longer a part of Colombia. Separatist sentiment had grown so strong there as well as in Ecuador that this seemed to him the logical thing to do. Caicedo pointed out that it was not wise to draw up a constitution for *Gran Colombia* when for all practical purposes two important parts of the union (Ecuador and Venezuela) were no longer in the union. He recommended that a convention for New Granada be called. Many towns in Colombia were in agreement with Caicedo. The convention proceeded, nevertheless, to draw up a constitution for Colombia, which in those days meant New Granada

⁴ For text of the decree, see Pombo and Guerra, *op. cit.*, II, 809-814.

(present-day Colombia), Venezuela, and Ecuador. The constitution was signed on April 29.

On May 4 the convention elected Joaquín Mosquera and Caicedo as the first President and Vice-President under the new constitution. Inasmuch as Mosquera was absent, Caicedo took charge of the executive office. The convention concluded its sessions on May 10, 1830.

POLITICAL ORGANIZATION

One of the chief criticisms of the Constitution of 1821 was that it provided for a government which was "excessively centralized." Some Colombian commentators and historians say that the Constitution of 1830 made concessions to federalist sentiment by modifying the centralism of 1821. An attempt will be made to show that concessions to the federalists were not real concessions in any sense of the word, that the Constitution of 1830 was actually as highly centralized as that of 1821. But before this phase of the discussion is broached, some changes made in the organization of the national government itself will be discussed.

The Constitution of 1830 made no very significant changes in the powers and functions of the legislative branch. The terms of office for Senators (eight years) and Representatives (four years) remained the same; however, changes were made as to the time of election.

In the Constitution of 1821 one half of the Senators were elected every four years (Art. 94). This was changed so that one fourth were elected every two years (Art. 49). Equality of representation in the Senate was retained, but there was a change in the areal basis of selection. By the terms of the Constitution of 1821, each Department elected four Senators (Art. 93), whereas Article 48 of the Constitution of 1830 provided that each Province was to elect one Senator. Attention is called to the fact that the Province became the basis of senatorial elections.

With regard to the selection of Representatives, the election area continued to be the Province. The population ratio for determining the number of Representatives to which each Province was entitled was increased from thirty thousand to forty thousand persons (1821, Arts. 85 and 86; 1830, Art. 58). Formerly the House of Representatives had been chosen in its entirety every four years. The Constitution of 1830 provided that one half of the House be elected every two years.

The court system of 1821 was quite generally maintained in the Constitution of 1830. The three grades of courts were continued. However, the selection of Justices of the Supreme Court was simplified.

The Constitution of 1821 provided that the President submit to the House of Representatives a list of three names for each place to be filled. The House struck one name from each of these ternaries and forwarded the revised lists to the Senate, which selected one person from each of the two-name lists to be a Justice of the Supreme Court (Art. 142). In 1830 participation by the House was discontinued, and the final selection was transferred from the Senate to the President. The latter constitution provided that the Senate draw up ternaries for each place to be filled, and from these lists the President selected the Justices (Art. 57 and Art. 85[8]). Whereas in 1821 the President initiated the procedure and the Senate made the final decision, in 1830 this was reversed, and the President's power thereby increased.

The selection of Judges for the intermediate courts was also modified. In 1821 these officers were selected by the President from ternaries submitted by the Supreme Court (Art. 148). In 1830 they were selected by the President with the advice of the Council of State from ternaries submitted by the Department Assemblies (Art. 85 [11] and Art. 130[1]).

The organization and jurisdiction of courts of first instance were left completely to Congress (1821, Art. 149; and 1830, Art. 36[8]).

In concluding the discussion on the judicial branch of government, mention should be made of the appearance of an agency which has become an integral part of Colombian governmental organization. By nature the Public Ministry (*Ministerio Público*) is an executive-judicial agency. As to its function, it was provided that "the Public Ministry shall be entrusted to an agent of the Executive known as the Attorney-General of the Nation [*Procurador General de la Nación*] who shall represent the government before the Tribunals and Courts and promote, before any authorities whatsoever, whether civil, military, or ecclesiastical, the national interests and all that relates to public order" (Art. 100). The Attorney-General of the Nation, as well as his subordinates, was appointed by the President with the advice of the Council of State (Art. 85[13]). This agency offers another illustration of the increased power of the President.

The Constitution of 1830 made several noteworthy changes in the executive branch of government. Two alterations were made in the procedure for the election of President and Vice-President, the first having to do with the required majority and the second with the time of election. In 1821 it was required that a candidate receive a two-thirds majority of the electoral votes to be elected President or Vice-President (Art. 72). This was reduced to a simple majority in 1830

(Art. 77). In the event no candidate obtained the required majority the election was made by a joint session of Congress. Both constitutions set up substantially the same procedure to be followed in Congress (1821, Arts. 73-76; 1830, Arts. 77-79).

A striking innovation appeared in the Constitution of 1830 in that the terms of office of the President and Vice-President did not coincide. Both officers had eight-year terms, but "The election of the Vice-President of the Republic shall take place in the fourth year after that of the President" (Art. 80). In order to achieve the desired staggering of terms, the first Vice-President was to be elected for four years instead of eight years (Art. 167).

No attempt will be made to summarize the extensive powers and functions of the President. His position as administrative head of the government was strengthened, along with his appointing power. However, the memory of Bolívar's dictatorship prompted the constituent convention to omit from the constitution any provisions relative to the President's authority to assume the exercise of extraordinary powers.

The Council of Government which had been set up in 1821 was replaced by the Council of State. The former Council of Government was composed of the Vice-President, one Justice of the Supreme Court, and the Secretaries of State (Art. 133). The Council of State was composed of the Vice-President, the Secretaries of State, the Attorney-General, and "twelve Councilors selected [by the President] (Art. 85 [7])), from among the citizenry without distinction of class" (Art. 95). In addition to the normal advisory functions, the Council of State was given a legislative function. It was empowered to "prepare, discuss, and draft bills which are to be presented to Congress in the name of the Executive" (Art. 97[2]).

The most important innovation in the provisions dealing with the Secretaries of State was that permitting them to participate in congressional debates. "They shall be admitted to debates on bills presented by the Executive, and they shall attend other debates whenever the respective House may deem it necessary; but they shall not have the right to vote" (Art. 91). As was the case in 1821, the Constitution of 1830 stipulated that all presidential orders, decrees, etc. had to be countersigned by the proper Secretary of State before they were legally valid (Art. 90).

The final innovation in the executive branch to be mentioned was the establishment of the Public Ministry, discussed above.

For all practical purposes the electoral system of 1821 was retained in the Constitution of 1830. The Electors, however, were

given one additional election to make; i.e., they elected the Deputies to the Department Assemblies (Art. 27[5]). The literacy and property qualifications for voting were retained (Arts. 14 and 20).

The territorial subdivisions of the country were the same in 1830 as in 1821, i.e., Departments, Provinces, Cantons, and Parishes.

The Constitution of 1830, like that of 1821, expressly repudiated the idea of federalism by the provision that "sovereignty resides essentially in the Nation" (1821, Art. 2; 1830, Art. 3). This phraseology was employed as a denial of sovereignty to the Provinces.

The title of the head of the government of the Department was changed from Intendant to Prefect, but his position in the governmental organization was the same in 1830 as in 1821. The Prefect was "a subordinate of the Executive whose immediate agent he is . . ." (Art. 120). "The head of each Province shall be a Governor who is politically subordinate to the Prefect of the Department" (Art. 121). Both of these officers were appointed by the President with the advice of the Council of State from lists of nominees submitted by the Department Assemblies. Centralization of administrative organization and power was assured, however, by the provision that "in making these appointments attention shall be given to ternaries submitted by the Department Assemblies, *which, however, shall not be binding*" (Art. 85[12]; italics inserted). In 1830, as in 1821, the constitution gave Congress complete authority to determine their functions and powers.

With regard to local government, by far the most noteworthy change in 1830 was the establishment of Department Assemblies in those Departments having a population of at least eighty thousand (Art. 127). It was provided that these assemblies were to have the "power to deliberate and decide upon the municipal and local questions of the Departments" (Art. 126). The constitution specifically gave them three functions: (1) to participate in the selection of the Judges of the various Courts of Appeals, (2) to participate in the selection of Prefects and Governors, and (3) to perform "any other functions provided by law" (Art. 130).

Other than participation in the two elections mentioned, the constitution itself gave no authority or functions to the Department Assemblies. By stating that they should perform "any other functions provided by law," the constitution placed the Assemblies in a position completely subservient to Congress. That is to say, any other functions they might perform had to be based upon an act of Congress. As an extra precaution to assure their subordinate position it was further provided that the "Department Assemblies shall never assume the

character of representatives of the People, nor may they in any case or under any pretext perform functions other than those provided by the Constitution and laws. Any action contrary to this shall be considered as an attempt against public order and safety" (Art. 132).

The Municipal Councils were likewise subordinate to Congress, and Congress alone. There are no provisions in the Constitution of 1830 relative to any relationship between the Municipal Councils and the Department Assemblies. This is to be expected, for the Department Assemblies were not in any sense of the word legislative bodies with any reserved or constitutionally granted powers to exercise. They were agencies set up for the local application of general legislation, and this is an administrative function. It was provided that "These [Municipal] Councils shall be organized by a law [of Congress] which shall designate their powers and determine the number of members, their term of office, and the manner of election" (Art. 134).

In concluding this summary some comment on the reputed modification of centralism in the Constitution of 1830 seems to be in order. As stated above, many of the Colombian writers hold that this constitution reduced the excessive centralism of the Constitution of 1821, and that this was a concession to the federalists. It is suggested that a close study of the two texts and the history of that period fails to substantiate this claim.

An attempt was made to point out in the historical section of this introduction that federalist sentiment was growing in Colombia. There seems to be no doubt that the group favoring a diminution of centralism was increasing not only in numbers but also in influence. By 1830 the situation had so developed that federalist pressure could no longer be ignored. Some concessions had to be made, if only apparent rather than substantial in nature. An examination of these so-called concessions will demonstrate that they actually did not diminish centralization of power. Their importance lies, not in what was accomplished in 1830 in the matter of decentralization, but rather in the fact that they clearly indicate that federalism was definitely on the road to the success which it achieved in several later constitutions.

The only concession worthy of the name appears to be that made by the constituent convention when it omitted from the Constitution of 1830 any provision permitting the President to assume extraordinary powers. It is true that the authority to assume such powers is not *ipso facto* inconsistent with the doctrine of federalism, nor is it inherent in centralism. However, extraordinary powers can be and have been extensively used in the Spanish American republics as a very effective

instrument for keeping localism from developing and manifesting itself. Hence, in view of this historical fact, one may possibly agree with the Colombian writers that this was a concession of some substance.

Much is made in the commentaries of the fact that the Constitution of 1830 set up Department Assemblies. These are considered by some to be a very important concession to federalist demands. As pointed out above, these bodies were more the agents of the central government than of local interests. They were completely subservient to Congress. There is no provision in the constitution whereby the people living in any given Department could assign any functions whatsoever to their assembly. The constitution itself made no assignment of specific functions other than participation in two elections. This electoral function will be discussed below.

It is granted that the establishment of any kind of local assembly might have been recognition of the existence of federalist sentiment of such proportions that it could not be completely ignored. But, on the other hand, it is suggested that the establishment of this particular kind of an assembly was in truth no real concession. The only determination which the people of a Department could make was in the selection of Deputies to the Assembly, and this was done indirectly through Electors. When a locality has no power whatsoever to determine the jurisdiction and functions of a reputedly local assembly, it is difficult to see any real element of federalism in this situation.

The people had no real power in the selection of the heads of their departmental or provincial governments. Under the Constitution of 1821 the heads of the departmental and provincial governments were selected by the President with the consent of the Senate without any local participation whatsoever (Arts. 152 and 153). Local participation was introduced by the Constitution of 1830. These officers were selected by the President with the advice of the Council of State (Art. 85[12]) from lists of persons submitted by the Department Assemblies (Art. 130[2]). But any concession to local control which this new procedure might have made was vitiated, as is pointed out above, by the provision that in making the appointments the President was not bound by the nominations submitted by the assemblies (Art. 85[12]). Such ineffective participation in the selection of these officers hardly constitutes a concession worthy of the name.

The fourth so-called concession to federalism has to do with the selection of Judges of the Courts of Appeals, which were district courts of second instance. According to the Constitution of 1830, the

Judges were appointed by the President with the advice of the Council of State from ternaries submitted by the respective Department Assemblies (Art. 85[11]). Attention is invited to the fact that paragraph 11 of Article 85 (dealing with the appointment of Judges), unlike paragraph 12 (dealing with the appointment of Prefects and Governors), does not contain any statement that the nomination shall not be binding on the President. In short, when appointing Judges of the Courts of Appeals, the President had to make them from the lists submitted.

Under these circumstances there was obviously some local control of the personnel of the Courts of Appeals. Possibly there is an element of federalism in this. It did assure the selection of Judges acceptable to the locality. If this is a concession to federalism, however, the concession stops there. Inasmuch as the Department Assemblies had no inherent power of legislation, the laws which these courts enforced were either those of Congress or ordinances passed by the Department Assemblies with congressional permission or mandate. The power to participate even effectively in the selection of the personnel of these courts, when combined with a total absence of any inherent power in the local government to determine their jurisdiction and functions, hardly seems to justify the conclusion that this either was any real concession to the federalists.

By 1830 federalist sentiment was strong enough in the republic to cause some concern and preoccupation. But it was not yet strong enough to force any real and substantial modification of the "excessive centralism" of the Constitution of 1821. The inability of the President to assume extraordinary powers was a move in this direction. Making the Province the areal basis for the selection of Senators as well as Representatives was another step in the direction of federalism, for, to use Sir Halford Mackinder's term, the Province had always been the "heartland" of the federalists. Other than these two concessions, if they can be called such, the Constitution of 1830 made no real compromise with federalism. That was to come at a later date after a period of bloody fighting.

A translation of the text of the *Constitution of the Republic of Colombia*, herein referred to as the Constitution of 1830, follows.

CONSTITUTION OF THE REPUBLIC OF COLOMBIA

In the Name of God, Supreme Legislator of the Universe,

We, the Representatives of Colombia in Congress assembled, in the exercise of the powers we have received from the People to constitute and establish the form of government and to organize the same in accordance with the political principles which they have professed, and with their wishes and desires, have agreed to the following

CONSTITUTION OF THE REPUBLIC OF COLOMBIA

TITLE I

THE COLOMBIAN NATION AND ITS TERRITORY

Article 1: The Colombian Nation is a union of all Colombians under the same political pact.

Article 2: The Colombian Nation is irrevocably free and independent of all foreign power or domination, and it is not and never shall be the patrimony of any family or person.

Article 3: Sovereignty resides basically in the Nation. From it emanate the political powers which may not be exercised except within the limits prescribed by this Constitution.

Article 4: The territory of Colombia comprises the Provinces which constituted the Viceroyalty of New Granada and the Captaincy-General of Venezuela.

Article 5: In the interest of better administration the territory of Colombia shall be divided into Departments, Provinces, Cantons, and Parishes.

TITLE II

THE RELIGION OF COLOMBIA

Article 6: The Apostolic Roman Catholic Religion is the religion of the Republic.

Article 7: It is the duty of the Government, in exercising the patronage (*patronato*) of the Colombian Church, to protect it and not tolerate the public exercise of any other religion.

TITLE III

COLOMBIANS

Article 8: Colombians are such either by birth or by naturalization.

Article 9: The following are Colombians by birth:

(1) Those born free in the territory of Colombia and their children, even though the latter may have been born abroad;

(2) All emancipated slaves born in the territory of Colombia.

Article 10: The following are Colombians by naturalization:

(1) Those not born in the territory of Colombia who were domiciled therein on the day the place of their residence underwent its political transformation and who submitted themselves to the Constitution of 1811;

(2) Children of Colombian father or mother who were born outside the territory of Colombia and who have returned to the Republic and declare before the duly constituted authorities that they wish to be Colombians;

(3) Aliens who obtain letters of naturalization;

(4) Aliens who have served or who shall serve in one or more campaigns with honor, or who have rendered other important services to the Republic in the promotion of independence, upon obtaining permission of the Executive to that effect.

TITLE IV

DUTIES OF COLOMBIANS AND THEIR POLITICAL RIGHTS

SECTION I

DUTIES OF COLOMBIANS

Article 11: The duties of Colombians are:

(1) To live in submission to the Constitution and laws;

(2) To respect and obey the Government and authorities, and to assist and defend them when necessary;

(3) To contribute to the public expenses;

(4) To serve and defend the fatherland, even at the sacrifice of life if necessary;

(5) To watch over the preservation of public liberties.

SECTION 2

THE POLITICAL RIGHTS OF COLOMBIANS

Article 12: Colombians are equal before the law whatever may be their circumstances or station in life.

Article 13: There shall be no hereditary employments, honors, or distinctions. Everyone has an equal right to vote and is eligible for public office if he is a citizen and has the necessary qualifications.

Article 14: To enjoy the rights of citizenship it is necessary:

(1) To be a Colombian;

(2) To be married or twenty-one years of age;

(3) To know how to read and write, but this qualification shall not be obligatory until the year 1840;

(4) To possess real property of an unencumbered value of 300 pesos, or in default of this, to be engaged in some profession or business that produces an annual income of 150 pesos, other than as a menial, domestic servant, or day laborer.

Article 15: The rights of citizenship are lost:

(1) For accepting employment from another country without permission of the Government, if already in the employ of Colombia;

(2) For rendering service to the enemies of Colombia;

(3) For being condemned to suffer corporal punishment, until restored to citizenship.

Article 16: The rights of citizenship are suspended:

(1) For becoming naturalized in a foreign country;

(2) For mental derangement;

(3) For being employed as a domestic servant;

(4) For nonpayment of sums due the national or municipal treasuries;

(5) For being declared a vagabond;

(6) For being an habitual drunkard;

(7) For being a declared bankrupt;

(8) For being subject to a criminal prosecution, after issue of the warrant of imprisonment;

(9) By judicial decree.

TITLE V

PARISH AND ELECTORAL ASSEMBLIES

SECTION I

PARISH ASSEMBLIES

Article 17: In every Parish, regardless of population, there shall be held a Parish Assembly every four years on the day appointed by law.

Article 18: Without awaiting any order, the parochial judges shall convoke the Assembly on the appointed day.

Article 19: The Parish Assembly shall be composed of the qualified voters of the Parish and shall be presided over by one of the parish judges assisted by the curate and three inhabitants of good repute whom the judge shall choose from among the parish voters.

Article 20: Voters are the inhabitants of the Parish who are in full enjoyment of the rights of citizenship, but any citizen present in the

Parish because of being in the service of the Republic shall have the right to vote.

Article 21: The function of the Parish Assembly is to vote for the Elector or Electors to which the Canton is entitled.

Article 22: To be an Elector it is necessary:

- (1) To be a duly qualified parochial voter;
- (2) To be twenty-five years of age;
- (3) To be a resident of one of the Parishes of the Canton, it being understood that a resident is one who has been registered in the Parish for at least a year, or who is present in the Parish in some kind of public service;
- (4) To possess real property of an unencumbered value of 1,500 pesos, or an annual income of 200 pesos accruing from the exercise of any profession requiring a scientific degree, or from a useful and respectable trade or calling, or a salary of 400 pesos.

Article 23: Those who obtain the greatest number of votes shall be declared constitutionally chosen Electors. In case of a tie, the choice shall be decided by lot.

SECTION 2

ELECTORAL ASSEMBLIES

Article 24: The Electoral Assembly shall be composed of Electors chosen by the Parish Assemblies, and it shall be presided over by an Elector chosen by the Assembly after it has been opened by the Governor of the Province.

Article 25: Every two years on the day appointed by law the Electoral Assembly shall meet in the capital of the Province, provided two thirds of the members elected attend.

Article 26: The term of office for Elector shall be four years. Permanent or temporary vacancies shall be filled when necessary by those who have the greatest number of votes in the election registers.

Article 27: The function of the Electoral Assembly is to vote for:

- (1) The President of the Republic;
- (2) The Vice-President;
- (3) The Senator for the Province and his Alternate (*Suplente*);
- (4) The Representative or Representatives for the Province, and for an equal number of Alternates (*Suplentes*);
- (5) The Deputy or Deputies of the Departmental Assembly, and their Alternates (*Suplentes*).

Article 28: The Electoral Assemblies may never give any instructions to members of Congress.

Article 29: The register of elections for President and Vice-President of the Republic shall be sent to the Senate uncanvassed. That for Senators, Representatives, and Deputies to the Departmental Assemblies shall be canvassed and sent to the presiding officers of the respective bodies, and those elected shall be informed thereof.

SECTION 3

PROVISIONS COMMON TO BOTH ASSEMBLIES

Article 30: He who sells his vote or buys that of another for himself or for a third party shall lose his right to vote and his eligibility to office.

Article 31: Elections shall be public, and no one carrying arms may attend them.

Article 32: The Parish and Electoral Assemblies shall meet for eight successive days, at the end of which time they shall be considered dissolved. Any action taken by the Assemblies which is not part of the electoral process for which they are convoked, and anything done after the expiration of the period mentioned, is not only null, but contrary to public security.

Article 33: A special law shall regulate these elections and shall determine the formalities which are to be observed in them.

TITLE VI

THE LEGISLATIVE POWER

Article 34: The Legislative Power shall be exercised by the Congress composed of two Houses, the Senate and House of Representatives.

Article 35: Congress shall assemble annually on the second of February even when it has not been convoked, and its ordinary sessions shall last ninety days. In case of necessity they may be prolonged thirty days more.

SECTION I

POWERS OF CONGRESS

Article 36: The following are the exclusive powers of Congress:

(1) To vote appropriations in view of the estimates which the Secretary of the Treasury shall submit to it, and any extraordinary sums for unforeseen expenses;

(2) To vote the national imposts, duties, and taxes;

(3) To enact necessary measures for the conservation, administration, and alienation of the national property;

(4) To contract debts on the credit of Colombia;

- (5) To establish a national bank;
- (6) To determine and make uniform the weight, value, type, and denomination of money;
- (7) To fix uniform weights and measures;
- (8) To create Tribunals and Courts that may be necessary;
- (9) To create or abolish public offices and to determine, diminish, or augment their salaries;
- (10) To grant personal rewards to those who may have performed great services for the Republic;
- (11) To establish the laws of naturalization;
- (12) To decree public honors to the memory of great men;
- (13) To fix annually the size of the land and sea forces for the following year, to determine their organization and recruitment, and to provide for the construction and equipment of the Navy;
- (14) To declare war on the basis of the facts presented by the Executive, and to instruct him to make peace;
- (15) To give its consent and approval to treaties of commerce, peace, amity, offensive and defensive alliance, neutrality, cession, acquisition, or change of territory which have been concluded by the Executive;
- (16) To promote by legislation public education in the national universities and colleges, the arts and sciences, establishments of general utility, and to concede for a limited time exclusive privileges for their support and encouragement;
- (17) To grant general pardons for any grave reason of public convenience;
- (18) To select the seat of Government and change it when deemed necessary;
- (19) To create new Departments, Provinces, and Cantons, abolish them, or form others from those already established; and to fix their boundaries in any manner conducive to better administration for reasons submitted by the Executive and after granting a hearing to the District Houses;
- (20) To allow or refuse passage of foreign troops through the territory of the Republic;
- (21) To grant or refuse permission to foreign naval squadrons to remain in the ports of the Republic for more than two months;
- (22) To draw up national codes of all kinds, and to enact laws and decrees necessary for the regulation of the different branches of the administration, and to interpret, amend, and annul existing legislation;

(23) To accept or reject resignations offered by the President and Vice-President of the Republic.

SECTION 2

CONCERNING THE ENACTMENT OF LAWS

Article 37: Laws and decrees may originate in either House upon introduction by members thereof or by the Executive, subject to that exception provided in Article 63, paragraph 5.

Article 38: Each bill and decree shall be debated on three separate days in accordance with the rules of each House.

Article 39: Bills and decrees which have not been admitted to debate in the House of origin may not be introduced again until the next session of Congress; but this does not prevent the use of any of the articles therein from being a part of another bill which may be introduced.

Article 40: Bills and decrees admitted and discussed in due form shall pass to the other House, which shall in accordance with the same procedure grant or refuse its consent or propose such amendments, additions, or modifications as it may deem proper.

Article 41: If the House in which the bill originated believes that the proposed amendments or modifications are not well founded, it may insist a third time with new arguments upon the admission of the bill in its original form.

Article 42: Although approved by both Houses of Congress, no bill shall have the force of law unless sanctioned by the Executive. If he approves it, he shall publish it and command that it be obeyed as law; should he disapprove of the bill, he shall return it to the House of origin with his objections within fifteen days.

Article 43: Said House shall examine the objections and discuss the bill *de novo*; should the objections be considered well founded and should they affect the bill *in toto*, the bill shall be placed in the archives and may not be reconsidered until a subsequent session of Congress; but if the objections are limited only to certain points, the objections shall be considered and the House shall decide upon what to do.

Article 44: If the said House by a two-thirds vote of the members present decides that the Executive's objections do not relate to the bill in its entirety, such decision shall be sent to the other House. If the latter House finds the objections well founded, it shall so report to the House of origin and return the bill in order that it may be placed in the archives according to the provisions stated in the preceding article; but

if by a two-thirds vote of the members present the second House concludes that the Executive's objections are not well founded, the bill shall be returned to the Executive for his sanction, which may not be denied under these circumstances.

Article 45: If, after the period prescribed in Article 42, the Executive has not returned the bill or decree with his objections, it shall have the force of law and as such shall be promulgated, unless Congress in the meantime shall have suspended its meetings or recessed, in which case it must be presented within the first fifteen days of the next session.

Article 46: In the laws and decrees enacted, Congress shall use this formula: *The Senate and House of Representatives of the Republic of Colombia, in Congress assembled, decree—*

Article 47: Laws shall be promulgated in a formal manner. This formality, their publication, and the time from which they are to be considered as published shall be determined by law.

SECTION 3

THE SENATE

Article 48: The Senate of the Republic shall be composed of citizens elected to that office by the Electoral Assemblies, there being one Senator for each Province.

Article 49: The term of office for Senators shall be eight years, one fourth of them being elected every two years.

Article 50: To be a Senator, it is necessary:

(1) To be a Colombian by birth in full enjoyment of the rights of citizenship;

(2) To be forty years of age;

(3) To be a native or resident of the Department in which is located the Province where the election takes place;

(4) To possess real property of an unencumbered value of 8,000 pesos, or in default of this, an annual income of 1,000 pesos accruing from real property, or one of 1,500 pesos accruing from some employment, business, or profession requiring a scientific degree.

Article 51: The Senate, acting as a court of justice, shall take cognizance exclusively of accusations brought against the President and Vice-President of the Republic, Secretaries and Councilors of State in those cases of responsibility specified in the Constitution, and against Justices of the High Court of Justice and the Attorney-General of the Nation for any grave offenses committed in the performance of their duties.

Article 52: In order that the Senate may proceed in the cases mentioned in the preceding article, accusations must be brought by the House of Representatives.

Article 53: The Senate may entrust the trial to a committee of its own members, reserving to itself the judgment and sentence, which shall be pronounced in open session by at least two thirds of the Senators present.

Article 54: From the moment an accusation has been received by the Senate, the accused shall be suspended from office.

Article 55: With respect to common crimes committed by the Executive, as described in Article 110, paragraph 7, the function of the Senate shall be to suspend this official from office and deliver him to the competent Tribunal.

Article 56: The law shall regulate the course and formalities of these trials and shall determine the penalties which the Senate may impose.

Article 57: The Senate shall submit to the Executive ternaries to be used in making appointments to the offices of Justice of the High Court of Justice, Archbishop and Bishop, as well as give its consent to the appointments of general officers of the Army and Navy.

SECTION 4

THE HOUSE OF REPRESENTATIVES

Article 58: The House of Representatives shall be composed of Representatives chosen by the Electoral Assemblies at the ratio of one for each 40,000 persons and another for any remainder of more than 20,000. When the population shall have increased by 500,000 persons, the ratio shall be one for every 50,000 persons and another for any remainder of more than 25,000. If the population is diminished by 500,000 persons, the ratio shall be reduced to one for each 30,000 persons and another for any remainder of more than 15,000.

Article 59: Any Province whose population does not reach the above-mentioned figures shall nevertheless elect one Representative.

Article 60: The term of office for Representatives shall be four years.

Article 61: One half of the Representatives are to be elected every two years.

Article 62: To be a Representative, it is necessary:

(1) To be a Colombian citizen in the full enjoyment of the rights of citizenship;

(2) To be a native or resident of the Province in which the election takes place;

(3) To be thirty years of age;

(4) To possess real property of an unencumbered value of four thousand pesos, or in default of this, an annual income of five hundred pesos accruing from real property, or one of eight hundred pesos accruing from some employment, business, or profession requiring a scientific degree.

Article 63: The following are powers peculiar to the House of Representatives:

(1) To bring charges, on its own initiative or at the instance of any citizen, against the President of the Republic or against the Vice-President when exercising the powers of President in the cases of high treason specified in Article 87;

(2) To bring charges in the same manner against the Secretaries and Councilors of State, the Attorney-General of the Nation, and the Justices of the High Court of Justice for misconduct in office;

(3) To scrutinize the expenditures of national income and to examine the annual account presented by the Secretary of the Treasury;

(4) To watch over everything concerning the national credit, to examine at each session the books and documents of the commission, and to name in accordance with law the principal officers of that establishment;

(5) To initiate laws relating to imposts and taxes.

SECTION 5

PROVISIONS COMMON TO BOTH HOUSES

Article 64: The Senate and House of Representatives may not begin their sessions without the attendance of two thirds of the entire membership of the respective Houses, and any number attending on the day appointed shall have the power to compel the attendance of absent members; however, on the expiration of thirty days after the day on which Congress should have met, the Houses shall be permitted to open the session with the attendance of only a majority, but they shall not be able to continue without the attendance of at least two thirds of those present in the town where the session is being held.

Article 65: There shall be joint sessions only:

(1) To open the sessions of Congress;

(2) To complete the election of the President and Vice-President of the Republic;

(3) To receive the oath taken by these officers;

- (4) To accept or reject their resignations;
- (5) To examine the account of the national debt.

In such joint sessions the President of the Senate shall preside, and in his absence the President of the House of Representatives.

Article 66: The Houses shall hold their sessions in the same town; neither shall be able to suspend its sessions for more than two days or remove to another place without the consent of the other.

Article 67: Vacancies in the Houses resulting from death, resignation, removal, or any other cause shall be filled by the respective alternates, and when for similar reasons the latter are unavailable, the Governor of the Province, at the request of the proper House, shall convoke an extraordinary session of the Electoral Assembly to choose a new member.

Article 68: The sessions of both Houses shall be public, but they may be held in secret when it is deemed expedient.

Article 69: Each House shall have the right to establish rules necessary for its regulation and the direction of its business. It may inflict upon any of its members who shall violate them the penalties which may be prescribed, and punish those members lacking in decorum or interrupting the deliberations.

Article 70: Such rules do not require the sanction of the Executive.

Article 71: The following may not be Senators or Representatives: the President and Vice-President of the Republic, Secretaries and Councilors of State, Justices of the High Court of Justice and of the Courts of Appeals, Prefects of Departments, Governors of Provinces, and others who may be excluded by law.

Article 72: Senators and Representatives, while the sessions last and during the time necessary for proceeding thereto and returning home, may not be accused or arrested for any civil action, or prosecuted or imprisoned for any criminal action until the House to which they belong has suspended them from office and delivered them to the competent Tribunal, unless they have been taken *in flagrante delicto* for an offense meriting corporal punishment.

Article 73: Senators and Representatives are not responsible at any time or to any authority for speeches or opinions expressed in the Houses.

Article 74: While in office, Senators and Representatives may not be appointed to any office under the Executive.

TITLE VII

THE EXECUTIVE POWER

SECTION I

THE HEAD OF THE EXECUTIVE POWER

Article 75: The Executive Power is entrusted to an officer known as the President of the Republic.

Article 76: In case of death, resignation, or physical or mental incapacity of the President, the Vice-President shall take charge of the Executive Power.

Article 77: The President of the Republic shall be elected by the Electoral Assemblies. When no candidate receives an absolute majority of electoral votes cast in the Assemblies, Congress, which has the power to scrutinize elections, shall name the three candidates who have received the greatest number of votes and from them shall choose the President of the Republic.

Article 78: This election shall take place in a continuous session and by secret balloting. If on the first ballot no one obtains two thirds of the votes of the members present, the voting shall be confined to the two candidates receiving the most votes, and should neither of the two then obtain the two thirds, the voting shall continue until that result is obtained.

Article 79: The election of the Vice-President of the Republic shall follow the same procedure employed in the election of the President.

Article 80: The election of the Vice-President of the Republic shall take place in the fourth year after that of the President.

Article 81: In the event of the death, resignation, or mental or physical incapacity of the Vice-President of the Republic while he is in charge of the Executive Power, the President of the Senate shall exercise those functions until a new election of President and Vice-President is held, for which the necessary orders shall be immediately issued. Persons chosen at such extraordinary elections for filling such vacancies shall remain in office until the end of the constitutional period.

Article 82: To be President or Vice-President of the Republic, it is necessary:

- (1) To be a Colombian by birth;
- (2) To be forty years of age;
- (3) To have resided in the Republic for at least six years preceding the election, but this shall not be required of those who have been absent in the service of the Republic.

Article 83: The term of office for President and Vice-President of the Republic shall be eight years reckoned from the fifteenth day of February, and they may not be re-elected to the same office during the next succeeding period of eight years.

Article 84: Persons who have been in charge of the Executive Power for at least two years immediately preceding the ordinary election may not be re-elected President or Vice-President of the Republic for the period following such election.

Article 85: The functions and powers of the Executive are:

(1) To preserve domestic order and tranquillity and to protect the country against foreign attack;

(2) To sanction the laws and decrees of Congress and issue all regulations and orders necessary for their execution;

(3) To convoke Congress for ordinary sessions and for extraordinary sessions should the welfare of the Republic require it; to open the sessions and to inform Congress of the state of the nation;

(4) To direct the land and sea forces, and to distribute them for the defense of the Republic;

(5) To use the national militia for internal security;

(6) To declare war with the previous authorization of Congress;

(7) To appoint and remove freely the Secretaries of State and the Councilors of State;

(8) To select, from ternaries submitted by the Senate, the Justices of the High Court of Justice, Archbishops, and Bishops; and with the consent of the Senate, to appoint the general officers of the Army and Navy;

(9) To appoint, with the advice of the Council of State, Ministers Plenipotentiary, Envoys, and all other Diplomatic Agents and Consuls-General;

(10) To direct diplomatic negotiations and enter into treaties of commerce, peace, amity, alliance, neutrality, cession, acquisition, or change of territory, and to ratify them with the previous consent and approval of Congress;

(11) To appoint, with the advice of the Council of State and from ternaries submitted by Departmental Assemblies, the Judges of the Courts of Appeals;

(12) To appoint, with the advice of the Council of State, Prefects of Departments and Governors of Provinces; in making these appointments attention shall be given to ternaries submitted by the Departmental Assemblies, which, however, shall not be binding;

(13) To appoint, with the advice of the Council of State, the

Attorney-General of the Nation and his agents, departmental as well as provincial, and the canonical dignitaries and prebendaries of the churches of Colombia;

(14) To appoint in accordance with law all civil, military, and treasury officials whose appointment is not given by law to another authority;

(15) Acting through the Public Ministry (*Ministerio Público*), to see that justice is administered by the Tribunals and Courts and that their decisions are executed;

(16) To commute sentences of capital punishment with the advice of the Council of State, provided always that it be done for some special reason of public expediency or on the recommendation of the Court which handed down the sentence, or without the necessity of such recommendation if the Court be consulted previously upon the matter; but this power does not extend to penalties imposed by the Senate;

(17) To see that the public taxes and revenues are collected and expended in accordance with law;

(18) To suspend from office, with the consent of the Council of State, employees of the executive branch whether political or financial and to consign them without delay to the competent Court along with the documents and reasons for the suspension.

Article 86: The Executive is not permitted:

(1) To take personal command of the land and naval forces without the express consent of Congress, in which case the person who is to succeed him shall take charge of the Executive Power;

(2) To deprive any Colombian of his liberty or inflict any punishment upon him. When public welfare and security demand the arrest of anyone, he shall be able to decree such arrest, but before the expiration of forty-eight hours he shall place the person arrested at the disposal of the competent Judge;

(3) To obstruct the course of judicial proceedings, or impede the progress of cases being tried according to the procedure prescribed by law;

(4) To prevent the elections provided for by this Constitution, or prevent persons elected from entering upon their duties;

(5) To dissolve the Houses or suspend their sessions;

(6) To leave the territory of the Republic while in office or for one year thereafter;

(7) To exercise the Executive Power while absent from the capital in some other part of the Republic;

(8) To use the funds and revenues destined for the public service in any manner other than that prescribed by law.

Article 87: The responsibility of the Executive attaches only to the following cases, which are crimes of high treason:

(1) For entering into any conspiracy against the liberty and independence of Colombia;

(2) For being involved in any plot to overthrow the Constitution of the Republic or the form of government established by it;

(3) For refusing to sanction laws and decrees approved by Congress when, in accordance with the Constitution, he is obliged to do so.

SECTION 2

SECRETARIES OF STATE

Article 88: The Ministry of State is divided into the following four departments:

(1) Interior and Justice;

(2) Treasury;

(3) War and Navy;

(4) Foreign Relations.

Article 89: Each Ministry shall be headed by a Secretary of State; the law shall organize the Ministries and regulate their functions.

Article 90: Secretaries of State must authorize all decrees, regulations, orders, and enactments issued by the Executive. Acts not having this authorization and all communications not made through the channels of the proper Ministry shall not be executed, even though they carry the signature of the Executive.

Article 91: Secretaries of State shall give the Houses all information and reports on their respective Ministries which may be required. They shall be admitted to debates on bills presented by the Executive, and they shall attend other debates whenever the respective House may deem it necessary; but they shall not have the right to vote.

Article 92: During the first ten days of the sessions, the Secretaries of State shall give to each House a report on the state of their respective Ministries.

Article 93: In the exercise of their duties, Secretaries of State are responsible:

(1) For treason as provided in Article 87, paragraphs 1 and 2;

(2) For bribery and corruption;

(3) For violation of the Constitution;

(4) For nonobservance of law;

(5) For abuse of power against the liberty, property, and security of a citizen;

(6) For embezzlement of public funds;

(7) For all grave crimes and offenses committed in the exercise of their duties.

Article 94: Neither a written nor verbal order from the Executive can absolve a Secretary from his responsibility.

SECTION 3

THE COUNCIL OF STATE

Article 95: To assist the Executive there shall be a Council of State composed of the Vice-President of the Republic, who shall preside, the Secretaries of State, the Attorney-General of the Nation, and twelve Councilors selected from among the citizenry without distinction of class.

Article 96: To be a Councilor of State it is necessary to be a Colombian in the full enjoyment of the rights of citizenship, and to be of good repute.

Article 97: The Council of State shall:

(1) Give its opinion concerning the sanctioning of laws and all important and general business of public administration, and in all other instances where the Executive may require it;

(2) Prepare, discuss, and draft bills which are to be presented to Congress in the name of the Executive;

(3) Give advice in those cases referred to in Article 85, and give the necessary information respecting the qualifications, merits, and circumstances of persons involved in the case.

Article 98: The Executive is not required to follow the advice of the Council of State.

Article 99: Councilors of State are responsible to the Senate for opinions they may give which are contrary to the provisions of the Constitution or laws.

SECTION 4

THE PUBLIC MINISTRY (MINISTERIO PUBLICO)

Article 100: The Public Ministry shall be entrusted to an agent of the Executive known as the Attorney-General of the Nation, who shall represent the Government before the Tribunals and Courts and promote, before any authorities whatsoever, whether civil, military, or ecclesiastical, the national interests and all that relates to public order.

Article 101: The Attorney-General of the Nation shall reside in

the capital of the Republic and shall communicate directly with the Executive through the Secretaries of State.

Article 102: To be Attorney-General of the Nation it is necessary to be a Colombian in the full exercise of the rights of citizenship and a lawyer in good standing and of good repute.

Article 103: The Public Ministry shall be regulated by a law which shall designate its agents and powers and determine whatever may be deemed necessary for the exercise of its functions.

TITLE VIII

THE ARMED FORCES

Article 104: The function of the armed forces is to defend the independence and liberty of the Republic, to maintain public order, and to secure the observance of the laws.

Article 105: The armed forces shall never assemble as such for purposes of deliberation. They are essentially obedient to the constituted authorities and to their chiefs in accordance with the laws and ordinances.

Article 106: With regard to jurisdiction, discipline, trials, and penalties, individuals in the Army and Navy are subject to the military ordinances.

Article 107: Members of the national militia while not in actual service may not be subjected to military law or to the punishments provided by it, but they shall, like other citizens, be subject to the regular laws and ordinary Judges; it being understood that they are in actual service when they are paid by the State, although some may serve gratuitously, or when engaged in the training exercises required by law.

Article 108: Officers of the Army and Navy must be Colombians and may not be deprived of their rank except by sentence passed in a proper trial.

TITLE IX

THE JUDICIAL POWER

Article 109: Justice shall be administered by a High Court of Justice, Courts of Appeals, and other Tribunals and Courts already established or which may be established by law.

SECTION I

THE HIGH COURT OF JUSTICE

Article 110: There shall be in the capital of the Republic a High Court of Justice whose powers shall be:

(1) To take cognizance of all cases involving Ministers Plenipotentiary, Envoys, and Diplomatic Agents accredited to the Government of the Republic in accordance with international law and existing treaties;

(2) To take cognizance of all controversies arising out of contracts or engagements entered into by the Executive or in his name;

(3) To settle conflicts between Courts of Appeals, and between them and other tribunals;

(4) To hear appeals from decisions handed down by the Courts of Appeals as are provided by law;

(5) To take cognizance of complaints against the Courts of Appeals for abuse of authority, or for neglect, denial, or delay in the administration of justice;

(6) To hear cases of responsibility brought against Judges of the Courts of Appeals for misconduct in the performance of their duties;

(7) To take cognizance of criminal charges carrying a penalty of corporal or otherwise infamous punishment brought against the President and Vice-President of the Republic after they have been suspended from office by the Senate in accordance with Article 55;

(8) To take cognizance of all criminal charges brought against Secretaries and Councilors of State, the Attorney-General of the Nation, and Justices of the High Court itself;

(9) To hear questions concerning the interpretation of any law which may be directed to it by the Superior Tribunals and, acting through the Executive, to advise Congress of its opinion thereon;

(10) And anything else provided by law.

Article 111: To be a Justice of the High Court of Justice, it is necessary:

(1) To be a Colombian by birth;

(2) To be forty years of age;

(3) To have been a Judge in one of the Courts of Appeals.

SECTION 2

THE COURTS OF APPEALS

Article 112: In order to facilitate the promptest administration of justice, judicial districts shall be established, and in each there shall be a Court of Appeals, whose powers shall be determined by law.

Article 113: To be a Judge of the Court of Appeals it is necessary:

(1) To be a Colombian;

(2) To be a lawyer in good standing;

(3) To be thirty-five years of age;

(4) To have been a Judge of first instance or Assessor for at least three years, or to have been creditably engaged in the practice of law for at least six years.

SECTION 3

GENERAL PROVISIONS FOR THE JUDICIAL SYSTEM

Article 114: Justices of the High Court and of the Courts of Appeals and other Judges may not be removed from office except by judicial sentence, or suspended from office unless a legally admitted accusation is pending against them; nor may they be transferred to any other office unless they have voluntarily left their judicial posts.

Article 115: The Tribunals and Courts shall exercise no other functions than that of judging and seeing that their decisions are executed.

Article 116: All Tribunals and Courts are obliged to give opinions in support of their decisions.

Article 117: There shall be no more than three instances in any case.

Article 118: Trials and decisions of Tribunals shall be public, but the Judges may deliberate in private.

Article 119: Justices of the High Court of Justice shall be responsible for misconduct in office to the Senate, Judges of the Courts of Appeals to the High Court, and other Judges to the Courts of Appeals.

TITLE X

INTERNAL GOVERNMENT OF THE REPUBLIC

SECTION I

ADMINISTRATION OF DEPARTMENTS AND PROVINCES

Article 120: The head of the government of each Department shall be the Prefect, a subordinate of the Executive, whose immediate agent he is, and with whom he communicates directly through the proper Ministry.

Article 121: The head of each Province shall be a Governor who is politically subordinate to the Prefect of the Department.

Article 122: To be Prefect or Governor, it is necessary:

- (1) To be a Colombian in the full exercise of the rights of citizenship;
- (2) To be thirty years of age;
- (3) To have rendered previous service to the Republic and to be of good repute;

(4) To have resided in the territory of the Republic at least **three** years preceding appointment.

Article 123: The term of office for Prefects and Governors shall be four years.

Article 124: The civil and military authority of the Departments and Provinces may not be entrusted to the same person under any circumstances or pretext whatsoever.

Article 125: The Cantons shall be governed by an officer subordinate to the Governor, and his title and term of office shall be determined by the law which organizes the internal political regime of the Republic and designates the powers of the functionaries mentioned in this section.

SECTION 2

THE DEPARTMENTAL ASSEMBLIES

Article 126: For better administration there shall be established Departmental Assemblies having the power to deliberate and decide upon the municipal and local questions of the Departments, and to report upon everything which may concern the general interests of the Republic.

Article 127: In Departments having a population of eighty thousand there shall be a Departmental Assembly; but if in the opinion of any such Assembly there is not sufficient wealth and other conditions necessary for the support of such establishments are lacking, Congress shall combine it with the nearest Department.

Article 128: The Departmental Assembly shall be composed of Deputies from the Provinces situated in the Department who are chosen by the Electoral Assemblies after such Assemblies have completed election of Representatives to Congress, and said Deputies shall be chosen in accordance with the same formalities. The term of office for Deputies shall be four years.

Article 129: To be Deputy in a Departmental Assembly, it is necessary:

(1) To be a Colombian in the full exercise of the rights of citizenship;

(2) To be twenty-five years of age;

(3) To be a native or resident of the Province in which the election takes place;

(4) To possess real property of an unencumbered value of four thousand pesos, or in default of this, an income of five hundred pesos accruing from real property, or one of eight hundred pesos accruing

from some employment, business, or profession requiring a scientific degree.

Article 130: The functions of Departmental Assemblies are:

(1) To submit to the Executive in ternary names of persons to be appointed Judges of the Courts of Appeals;

(2) To submit to the Executive lists of persons eligible for the offices of Prefect of Department and Governor of Province;

(3) And any other functions provided by law.

Article 131: Departmental Assemblies shall hold annual sessions at such time as is appointed by law; the sessions shall be public and shall be held daily for forty days, but they may be prolonged to sixty days in cases of necessity.

Article 132: Departmental Assemblies shall never assume the character of representatives of the People, nor may they in any case or under any pretext perform functions other than those provided by the Constitution and laws. Any action contrary to this shall be considered as an attempt against public order and safety.

Article 133: The organic law of these Assemblies shall indicate their other powers and their place of meeting in the several districts.

SECTION 3

THE MUNICIPAL COUNCILS

Article 134: There shall be Municipal Councils in the capitals of the Provinces and in those cities in the Cantons designated by the Departmental Assemblies. These Councils shall be organized by a law which shall designate their powers and determine the number of members, their term of office, and the manner of election.

TITLE XI

CIVIL RIGHTS AND GUARANTEES

Article 135: All public officials are responsible for their conduct in the exercise of their functions as prescribed by the Constitution and laws.

Article 136: Colombians have equality before the law in that whether its provisions are intended to protect or to punish, they are the same for all and the law favors them in equal degree for the preservation of their rights.

Article 137: Colombians are at liberty to settle their differences by arbitration at any stage of the proceedings; they may change their domicile, absent themselves from the Republic as well as return to it,

provided they observe the legal formalities and do nothing which is prohibited by law.

Article 138: No Colombian may be deprived of trial by the ordinary Judges, nor may he be tried by special commissions or extraordinary tribunals.

Article 139: No Colombian may be taken or arrested except by competent authority unless he is discovered *in flagrante delicto*, in which case anyone may arrest him and take him before a Judge.

Article 140: Except in cases of imprisonment by virtue of a legal warrant or of correctional punishment, no Colombian may be arrested or sent to prison in a criminal matter except for an offense deserving corporal punishment.

Article 141: Within twelve hours at the most after the arrest or imprisonment of any individual, the Judge shall issue an order over his own signature stating the facts of the case, and a copy of the same shall be delivered to the prisoner if he demands it. The Judge who neglects this formality and the jailer who does not apply for such order after the lapse of twelve hours shall be punished for arbitrary detention, and neither of them shall employ any more force or confinement than is absolutely necessary for the detention of the prisoner or person arrested.

Article 142: No Colombian is obliged to give evidence in any criminal case against himself, his spouse, ascendants, descendants, or brothers and sisters.

Article 143: No penalty shall be applied to the innocent, however near his relationship to the guilty.

Article 144: No one shall be confined in a prison which is not publicly known and legally authorized as such.

Article 145: No Colombian shall be sentenced or punished except for violation of a law in operation before the commission of his offense, nor until after he has been prosecuted, heard, and legally convicted.

Article 146: No Colombian shall be deprived of his property, nor shall it be applied to any public use without his consent. Should the public interest, legally ascertained, require this, the owner shall receive adequate prior compensation.

Article 147: The military shall not be billeted or lodged in private houses without the consent of the occupants; the civil authorities shall in accordance with law prepare quarters and lodgings for officers and men who are in service during peace and war.

Article 148: The penalty of confiscation is hereby abolished, but

this does not include forfeitures or fines assigned by law to certain crimes.

Article 149: No kind of labor, industry, or trade not contrary to public morals shall be prohibited to Colombians, and everyone is at liberty to engage in whatever business he pleases except those which may be absolutely indispensable to the subsistence of the State.

Article 150: The entail of estates as well as every other description of entail is prohibited.

Article 151: Every Colombian has the right to publish freely his thoughts and opinions without previous censorship, subject, however, to legal responsibility.

Article 152: The domicile of a Colombian is inviolable; it cannot be entered except when necessary and in accordance with the formalities required by law.

Article 153: Correspondence is likewise inviolable. Letters shall be neither intercepted nor opened at any time except by competent authority and under circumstances prescribed by law.

Article 154: All Colombians have the right to assert claims before public officials when done with the proper moderation and respect; anyone may present in writing to Congress or the Executive whatever he deems conducive to the general welfare of the Nation; but no individual or association of individuals may petition the authorities in the name of the People, much less arrogate unto themselves the character of the *People*. Those who contravene this provision shall be arrested, prosecuted, and tried in accordance with the law.

Article 155: The public debt is guaranteed.

Article 156: No money shall be drawn from the National Treasury for any use other than that prescribed by law and in conformity with the budget approved by Congress, which shall be regularly published every year.

TITLE XII

INTERPRETATION AND AMENDMENT OF THE CONSTITUTION

Article 157: Every public functionary and employee upon entering upon his office shall take an oath to maintain and defend the Constitution and to fulfil faithfully and exactly the duties of his office.

Article 158: The President and Vice-President of the Republic shall take their oaths in the presence of a joint session of Congress if it is in session, and, if not, in the presence of the Council of State, the Tribunals, and principal officers in the capital. The Presidents of the

Houses of Congress shall take their oaths in the presence of their respective Houses. Members of the Houses shall take their oaths in the presence of their respective Presidents. Other functionaries and employees shall take theirs at the hands of the Executive or the official charged with administering oaths.

Article 159: Congress has the power to resolve any doubt which may arise concerning the meaning of any of the articles of this Constitution.

Article 160: Any alteration in one or more of the articles of this Constitution, or any additions thereto may be proposed in either House; whenever the proposal shall be supported by at least one fifth of the members present and admitted to debate by a majority, it shall be debated according to the forms prescribed for bills; if the proposed change be pronounced necessary by a two-thirds vote of the members present, it shall be sent to the other House.

Article 161: If the reform or addition is approved in the other House in accordance with the provisions of the preceding article, it shall be sent to the Executive for the sole purpose of being published and circulated, and he shall submit it to the Congress again during its session the following year.

Article 162: In the session of the following year, Congress shall take under consideration the reform or addition approved in the preceding session, and if accepted by a two-thirds vote of the members present in accordance with the formalities provided in Article 160, it shall be considered a part of this Constitution and sent to the Executive for publication.

Article 163: The Executive may not present bills having for their purpose the interpretation of any one or more articles of this Constitution, or any for its amendment; he may, however, in either case offer his own opinions on the subject.

Article 164: The power of Congress to amend the Constitution shall not include the power to change the form of government, which shall always be republican, popular, representative, and responsible.

TRANSITORY ARTICLES

Article 165: The next Constitutional Congress shall meet on February 2, 1831.

Article 166: During the opening days of the sessions of 1832, 1834, and 1836 lots shall be cast to determine which Senators' terms of office shall expire in order that the membership may be renewed by fourths as directed by the Constitution. In the session of 1832 lots shall be

cast in the House of Representatives in order that the membership may be renewed by halves.

Article 167: The first Vice-President of the Republic to be elected by the Electoral Assemblies at the time the President is chosen shall remain in office only four years.

Done in the Constituent Congress in Bogotá the 29th of April 1830, and of Independence the twentieth.

VICENTE BORRERO, President of Congress

JOSÉ MODESTO LARREA, Vice-President

Deputies for Antioquia: *Dr. Félix Restrepo, Alejandro Vélez, Juan de Dios Aranzazu.* Deputy for Apure: *Pedro Briceño Méndez.* Deputy for Barcelona: *Juan Gual.* Deputy for Barinas: *José Miguel de Unda.* Deputies for Bogotá: *Estanislao Vergara, Jerónimo de Mendoza, Agustín Gutiérrez y Moreno, Miguel Tobar.* Deputy for Buenaventura: *José M. Cárdenas.* Deputy for Caracas: *José L. Silva.* Deputies for Cartagena: *J. M. del Castillo, Joaquín José Gori, J. García del Río.* Deputy for Casanare: *Juan de Dios Méndez.* Deputy for Coro: *Rafael Hermoso.* Deputy for Cuenca: *José Andrés García.* Deputies for Chimborazo: *Pedro Dávalos, Pedro Zambrano, Dr. Ramón Pizarro.* Deputy for Guayaquil: *M. Santiago de Icaza.* Deputy for Imbabura: *Antonio Martínez Pallares.* Deputy for Loja: *José Félix Valdivieso.* Deputy for Manabí: *Cayetano Ramírez y Fita.* Deputy for Maracaibo: *J. M. Carreño.* Deputy for Mariquita: *J. Posada Gutiérrez.* Deputy for Mompós: *Eusebio María Canabal.* Deputy for Neiva: *J. M. Ortega.* Deputies for Pamplona: *Raimundo Rodríguez, Cruz Carrillo.* Deputies for Panamá: *José Cucalón, Ramón Vallarino.* Deputy for Pasto: *Pedro Antonio Torres.* Deputy for Pichincha: *José M. de Arteta.* Deputy for Popayán: *Manuel M. Quijano.* Deputy for Ríoacha: *Juan de Francisco Martín.* Deputies for Socorro: *Francisco J. Cuevas, Salvador Camacho, Dr. Juan Nepomuceno Parra.* Deputies for Tunja: *Andrés M. Gallo, Juan Nepomuceno Escobar, José Antonio Amaya, Gregorio de J. Fonseca, Miguel Valenzuela.* Deputy for Veraguas: *José Sardá.*

Secretaries: *Simón Burgos and Rafael Caro.*

CONSTITUTION
OF THE
STATE OF NEW GRANADA
(Constitution of 1832)

Constitution of 1832

HISTORICAL BACKGROUND

AFTER APPROVING the Constitution of 1830 (April 29), the constituent convention agreed to submit it to the Venezuelans for their approval. It was further decided, however, that if the majority of the towns in that part of the republic refused, the government would not resort to war to force compliance. Negotiations were entered into without success. On August 16, 1830, the Venezuelans refused to accept the Constitution of 1830. Thus the independent republic of Venezuela came into existence.

About the same time General Juan José Flores, leader of the separatists in the south, called a constitutional convention in Riobamba. This convention met August 10, 1830, organized an independent Ecuador, and adopted a constitution. As a result of these separations only the territory of the New Granada section of the Colombian republic was left.

As was pointed out in the introduction to the Constitution of 1830, Caicedo saw the handwriting on the wall. He admonished the convention to discontinue its work until such time as a convention composed exclusively of New Granadines could be assembled to draw up a constitution for New Granada alone. As we have seen, the convention ignored Caicedo's recommendation and persisted in its purpose, a purpose obviously destined to failure. The withdrawal of Venezuela and Ecuador from the union undid the work of *El Congreso Admirable* and made necessary the adoption of a new constitution, that of 1832.

President Joaquín Mosquera did his best to conciliate the various factions in the country. It was a fruitless effort because opposition to the new constitution developed immediately in Neiva, Socorro, and other localities in the interior. Colonel Francisco Jiménez led a rebel force composed of the Callao Battalion garrisoned in Bogotá and the militia of the Sabana against the capital itself. On August 27, 1830, Jiménez defeated the government forces near Santuario and took over the capital. The rebels forced President Mosquera to appoint General Rafael Urdaneta as Secretary of War. Try as he would, President Mosquera could not stabilize the situation; and on September 5, 1830, the municipal council of Bogotá called on General Urdaneta to take over the government.

Technically, Urdaneta was an interim dictator who was to have charge of the government until Bolívar could be persuaded to return from Santa Marta, but Bolívar, very much broken in health, had neither the strength nor the inclination to return to Bogotá. After a lingering illness, he died December 17, 1830. The death of the Liberator deprived the supporters of the Urdaneta government of a powerful symbol. At the same time it gave the opponents of that government great hopes and determination. It became very urgent for the government to define its policy. Urdaneta was called upon to enforce the Constitution of 1830 in so far as it was applicable to conditions in New Granada. He did this by a decree re-establishing civil guarantees in January, 1831. He also called upon the Departments of Antioquia, Boyacá, Cauca, Cundinamarca, the Isthmus, and Magdalena to send deputies to a constitutional convention to meet at Leiva on June 15, 1831, to amend the constitution.

This was not enough to assure his opponents of his good intentions. Open opposition to his government developed immediately in the south, the Cauca Valley, Buenaventura, Chocó, Magdalena, Antioquia, and elsewhere. By April, 1831, it was evident that Urdaneta's government was beginning to fall. General Caicedo, the Vice-President whom Urdaneta had deposed, became the leader of the legitimists. On April 14, 1831, Caicedo issued a proclamation at Purificación declaring himself to be in charge of the executive power in the absence of President Mosquera, who was out of the country. To avoid open warfare, Urdaneta and Caicedo agreed to use their influence with their followers in order to settle amicably all differences between them. It is to Urdaneta's credit that he agreed to terminate his government, for he had the superior force with which to resist the demands of the legitimists. He retired from public life, and Caicedo was chosen to succeed him. Caicedo arrived in Bogotá on May 2, 1831, to take over the government. One of his first acts was to issue a call for a constitutional convention.

The convention began its sessions on October 20, 1831. The Constitution of 1832 was approved on February 29, 1832. In this convention thirteen Provinces were represented: Antioquia, Bogotá, Cartagena, Casanare, Mariquita, Mompox, Neiva, Pamplona, Panamá, Ríohacha, Socorro, Santa Marta, and Tunja. Political confusion and disturbance in the south and in the Cauca Valley prevented the Provinces of Cauca, Chocó, Pasto, and Popayán from sending delegates.¹

¹ Ramón Correa, *La Convención de Rionegro*, p. 30.

POLITICAL ORGANIZATION

The Constitution of 1832 set up a unitary government for New Granada. It did not specifically stipulate that sovereignty resides in the nation, as had been done in 1821 and 1830. It achieved the same end, however, by providing that "public functionaries, whatever may be the nature of their authority, shall be agents of the Nation and shall be responsible to it for their public conduct" (Art. 3).

Some alterations were made in the legislative branch of the government. Congress was granted practically all the powers it had had under the Constitution of 1830 and more. As will be shown below, the President was deprived of much of his appointing power, which was entrusted principally to Congress.

In the Constitution of 1832 the Department was abolished and the Province became the major territorial subdivision. Senators were elected on a provincial basis. There was not equal representation in the Senate, as had been the case in 1821 and 1830. Each Province was entitled to one Senator for each sixty thousand persons and an additional Senator for any remainder of thirty thousand or more (Art. 41). The term of Senators was reduced from eight to four years, one half being elected every two years (Art. 42). Representatives continued to be elected in the various Provinces on a population basis. The ratio was one Representative for each twenty-five thousand persons and an additional Representative for any remainder of twelve thousand or more (Art. 50). The term of Representatives was reduced from four to two years, one half being elected every year (Art. 52). Senators and Representatives were both indirectly elected by the Electoral Assemblies. More will be said on this in the discussion on the electoral system of the Constitution of 1832.

The judicial system consisted of the usual three grades of courts, and their powers and functions continued to be about the same as in the preceding constitutions. Formerly the Justices of the Supreme Court had held office during good behavior. Their term was reduced to four years, one half of the Justices being selected every two years. They were ineligible for reappointment (Art. 145).

The Constitution of 1832 provided a procedure for the selection of Supreme Court Justices which was more complicated than any of its predecessors. Each Provincial House submitted to the Council of State ternaries for each position to be filled on the Supreme Court bench (Art. 160[2]). In other words, there were as many separate ternaries for each position on the bench as there were Provincial Houses.

From these many lists the Council of State prepared one ternary for each position on the bench. The lists prepared by the Council were sent to the House of Representatives, which struck one name from each list before forwarding them to the Senate (Art. 133). The Senate selected the individual Justices from the two-name lists submitted by the House (Art. 133). It is to be noted that the President had no participation whatsoever in the selection.

The President did participate in the selection of Judges for the intermediate courts, known as District Tribunals in this constitution. Each of the Provincial Houses located in a given judicial district submitted to the Supreme Court ternaries for each position on the district bench to be filled. From these several ternaries the Supreme Court made one ternary for each position and forwarded them to the President. The President, with the advice of the Council of State, selected the individual Judges from the Supreme Court's ternaries (Arts. 106[11] and 141). The term of office for District Tribunal Judges was also four years, one half being appointed every two years. These Judges also were ineligible for reappointment (Art. 145).

Like the preceding constitutions, that of 1832 also gave Congress complete discretion with regard to the organization and functions of courts of first instance (Art. 143).

In concluding the discussion on the judicial system one thing should be emphasized. In the selection of the personnel for both the Supreme Court and the District Tribunals each agency had to confine its activity to the names submitted to it by the agency which preceded it in the process.

Under the Constitution of 1832 the President was not so powerful an officer as formerly. His appointing power particularly was reduced. The modifications in this regard are pointed out in the discussion of the various officers in this introduction. But he had one power not found in the Constitution of 1830. The authority to assume extraordinary powers was restored by the Constitution of 1832. He could assume such powers with the consent of Congress, and if Congress were not in session, with the consent of the Council of State (Art. 108). It should be pointed out here that the Council of State, under the Constitution of 1832, was not a creature of the President. This is discussed more fully below.

Nothing new appears in the Constitution of 1832 with regard to the election of the President and Vice-President (Arts. 95-97). The terms of both were reduced from eight to four years. Their terms

did not coincide, and neither was eligible for re-election (Arts. 97, 100-103).

No significant changes were made with regard to the Secretaries of State (Arts. 112-119).

The Constitution of 1832 provided for a Council of Government as well as a Council of State. The former was composed of the Vice-President and the Secretaries of State. Its function was to advise the President "on all administrative matters" (Art. 120).

The Council of State was composed of seven Councilors (Art. 121). They were chosen by Congress for a term of four years, "one half being chosen every two years" (Arts. 121 and 123). The functions of the Council of State were advisory, legislative, and electoral (Art. 128).

The territorial subdivisions of the country were Provinces, Cantons, and Parishes (Art. 150). The Governor was the head of the Province. He was "a subordinate of the Executive and his immediate constitutional agent . . ." (Art. 151). "All the public functionaries of whatever class and denomination residing within the same Province [were] subordinate to the Governor" (Art. 152). The Governor was appointed by the President from among six persons nominated by the Provincial Houses (Art. 160[4]). The President had to make his selection from among those so nominated. From the standpoint of unitary government this was an unfortunate situation. Provincial Houses dominated by the party in opposition to that of the President naturally made a practice of nominating only members of their party and thereby embarrassed presidential administrative activity.²

The Constitution of 1832 provided that in each Province there was to be a Provincial House composed of Deputies elected in each Canton of the Province (Art. 156). Deputies were elected by the cantonal Electoral Assemblies for terms of two years, one half being elected every year (Art. 157).

The powers and functions of the Provincial Houses were much greater than those of the Department Assemblies of the Constitution of 1830. As a portent of constitutional developments to come, one function granted the Provincial Houses was very significant. Under the Constitution of 1821 the Electoral Assemblies themselves canvassed the votes for Representatives and completed the election if no candidate received the necessary majority (Art. 37). The votes cast for Senators were canvassed by Congress, which body completed the election if no candidate received the required majority (Art. 78). The Constitu-

² Francisco de P. Pérez, *Derecho constitucional colombiano*, p. 62.

tion of 1830 provided that the Electoral Assemblies canvass and complete the election of both Senators and Representatives (Art. 29). In other words, under these two constitutions the electoral process for members of both Houses of Congress was in the hands of the Electoral Assemblies and Congress itself. While retaining the practice of having Senators and Representatives chosen by Electoral Assemblies, the Constitution of 1832 introduced a new technique for completing elections when candidates failed to obtain the stipulated majority. Article 160(1) provided that the Provincial Houses were to complete the election "by taking from said Registers the names of the three persons who have obtained the greatest number of votes and choosing one from this number."

The power of the Provincial Houses to limit the latitude of the President in appointing Governors of the Provinces has already been discussed. The Provincial Houses also participated in the selection of Supreme Court Justices and Judges of the District Tribunals. All of which is to say that the Provincial Houses participated in the selection of important officers in all three branches of government.

A second significant function constitutionally granted the Provincial Houses was the power "to levy taxes and contributions necessary for the provincial services." The taxes, however, did "not go into effect until approved by Congress" (Art. 160[7]). The Provincial Houses were also empowered to draw up budgets "To promote the advancement and prosperity of the Province, its policies, public works, and any other establishments of utility, charity, and convenience paid for and sustained by its own revenues" (Art. 160[8] and [9]).

A third constitutional function of importance was that which gave the Provincial Houses the power "To examine and approve *definitively* each year the accounts of collection and disbursement of the municipal revenues of the Cantons" (Art. 160[11]; italics inserted). This gave the Provincial Houses some control of the finances of the municipal governments in the Province.

From what has been said above it is obvious that the Provincial Houses under the Constitution of 1832 were constitutionally a much more important element in the governmental organization than were the Department Assemblies under the Constitution of 1830 or the *Juntas de Provincia* established in 1825 by Congress under the Constitution of 1821.

For the first time by express provision in the constitution these subordinate bodies were given powers which were by nature electoral, appointive, budgetary, revenue, administrative, and supervisory. This

unprecedented expansion of powers and functions expressly set forth in the constitution itself might, at first glance, lead one to conclude that there was much of federalism in the constitutional organization set up in 1832. This conclusion is not valid. The powers of these Houses are set forth in Article 160. The very next article (161) provides that "the Provincial Houses shall not have the power to suspend, modify, or interpret the laws and resolutions of Congress, *or to perform any executive or judicial act or any other function not given them by the Constitution or law [of Congress]*. Their deliberative resolutions shall be annually submitted to Congress through the President of the Republic, and they shall be valid *unless expressly disapproved*. Any other procedure shall be considered contrary to public order and security" (italics inserted). Article 162 goes on to state that "Congress shall have power to annul *all acts and resolutions of Provincial Houses . . .*" (italics inserted). This same article gave the President and the Governor of the Province the power to suspend all acts of the Provincial Houses when either of these officers considered them to be "contrary to the Constitution or laws or not within the competency of the Houses" The Constitution of 1832 gave the Provincial Houses an express and more definite sphere within which to operate. The power of the Congress, the President, and the Governors to annul or suspend all actions taken within this sphere seems to justify the conclusion that the Constitution of 1832 did not recognize or establish in the Provinces any inherent residuary powers, the existence of which is of the very essence of federal organization.

A few comments should be made about the constitutional provision relative to Municipal Councils. The Constitutions of 1821 and 1830 left it completely to Congress to decide what towns should have councils as well as the power to determine what their organization and functions should be. This was somewhat modified by the Constitution of 1832, which made the relationship between the Provincial Houses and municipal government a bit more intimate. We have already seen that this constitution gave the Provincial Houses a supervisory power over the finances of the Municipal Councils (Art. 160[11]). Article 168 empowered the Provincial Houses to decide what towns should have Municipal Councils. This was the extent of power granted. The same article goes on to say that "the law [of Congress] shall provide all regulations relative to their organization and functions." The national government determined the scope of activity for Municipal Councils.

Indirect election of all elective officers except the Electors was

continued in 1832. The Electoral Assemblies chose the President, Vice-President, Senators, Representatives, and Deputies to the Provincial Houses (Arts. 16-38). Literacy was continued as a qualification for voting (Art. 8[2]). The property qualification was modified. Formerly to vote one had to possess a certain amount of real property; or, lacking this, the voter had to be engaged in some business or occupation other than as a day laborer or domestic servant (1821, Art. 15[4]; 1830, Art. 14[4]). In 1832 the real property qualification was discontinued. In its stead it was provided that voters had to have "an assured income" which did not result from being "employed by another as a domestic servant or as a day laborer" (Art. 8[3]).

In the Constitution of 1832 all terms of office except that of the Governor were reduced. The tenure of the President, Vice-President, Senators, Representatives, and Deputies to the subordinate assemblies was reduced by half. The term of office for Justices of the Supreme Court and Judges of the District Tribunals was reduced from "good behavior" to four years. The President, Vice-President, Justices, and Judges were ineligible for re-election to the term immediately following. The Senate, House of Representatives, Provincial Houses, Supreme Court, and District Tribunals were renewed by halves.

From what has been said above it is apparent that the Constitution of 1832, like those of 1821 and 1830, provided for a unitary government. There were no residuary or independent powers in the Provinces. All power ultimately resided in the national government. But on the other hand, the Constitution of 1832 was the most serious attempt to effect a compromise between centralist and federalist demands. For purposes of emphasis, a recapitulation of innovations introduced into this constitution follows.

In the eyes of the anticentralists, the Province was always the basic unit of political loyalty and organization. To them it was the natural area to be used in effectuating decentralization of governmental power, and federalism appeared to them the best method of achieving this decentralization. Hence anything which increased the importance of the Provinces in the governmental organization of the country benefited the federalist cause directly or indirectly. Up to 1832 no constitution, save that of 1811, did so much to increase the importance of the Province.

How was the importance of the Province enhanced? The abolition of the Department as the major territorial subdivision contributed. The establishment of Provincial Houses with constitutionally granted powers of unprecedented latitude gave the federalists something

tangible and vital on which to build. The decade during which the Constitution of 1832 was in force is filled with instances of anticentralist use of the Provincial House as an instrument of opposition and embarrassment to the national government. Provisions of the constitution and laws to the contrary notwithstanding, these Houses were constantly used in attempts to implement the federalist conviction that local problems of government should be locally met and settled independently of the national government.

The importance of the Provinces was further increased by the new methods of selecting certain officials. Electing Senators as well as Representatives on a provincial basis is significant. Even more important is the fact that it was the Provincial Houses which completed the election of Senators and Representatives when no candidate received the required majority. Finally the participation of the Houses in the selection of Governors and District Judges is worthy of note since these officers had jurisdiction on a provincial basis.

The centralists hoped that the Constitution of 1832 would settle the problem of federalism. In his message to the people, the president of the constitutional convention said:

The effort has been made in this Constitution to assure the importance of the Provinces by establishing in each of them a House to look after provincial interests, supervise provincial establishments, promote industry, encourage education, and participate in the selection of provincial and national officers. *Henceforth centralism shall no longer be an obstacle to the felicity of the towns*, and the prosperity of each of them shall now be in the hands of their immediate agents.³

Subsequent events proved, however, that instead of being a compromise productive of peace and stability, the Constitution of 1832 encouraged the anticentralists to continue their opposition and increase their pressure. Juridically they gained little if anything. Politically they gained much. They got the opportunity and some institutions through which they could more effectively than before make practical inroads on the existing legal unitarianism. They got the opportunity to taste of and gain experience in local administration. And as events proved, this experience confirmed their conviction that federalism was the only solution.

A translation of the text of the *Constitution of the State of New Granada*, herein referred to as the Constitution of 1832, follows.

³José de la Vega, *op. cit.*, p. 170; italics appear in text quoted.

CONSTITUTION OF THE STATE OF NEW GRANADA

In the Name of God, Creator and Supreme Legislator
of the Universe:

We, the Representatives of New Granada in convention assembled, being desirous of meeting the wishes of our constituents, the People, to secure national independence, consolidate the union, promote domestic peace and security, establish justice, and to give the person, life, honor, liberty, property, and equality of Granadines the most solid guarantees, order and decree the following

CONSTITUTION OF THE STATE OF NEW GRANADA TITLE I

NEW GRANADA AND GRANADINES

SECTION I

THE STATE OF NEW GRANADA

Article 1: The State of New Granada is composed of all Granadines united under a compact of political association for their common benefit.

Article 2: The boundaries of this State are the same as those which in 1810 separated the territory of New Granada from the Captaincies-General of Venezuela and Guatemala and from the Portuguese possessions in Brazil; the southern boundary shall be definitively established south of the Province of Pasto.

Article 3: The Granadine Nation shall be forever essentially and irrevocably sovereign, free, and independent of all foreign power or domination, and it is not and never shall be the patrimony of any family or person. The public functionaries, whatever may be the nature of their authority, shall be agents of the Nation and shall be responsible to it for their public conduct.

SECTION 2

GRANADINES

Article 4: Granadines are such either by birth or naturalization.

Article 5: The following are Granadines by birth:

(1) All free persons born in the territory of New Granada before the Provinces wherein they were born were independent of Spain;

(2) Other persons born in the territory of New Granada of parents who were Granadines by birth or naturalization;

(3) Those born abroad of Granadine parents absent in the service of the Republic or absent because of their devotion to the cause of independence and liberty, who have, or shall hereafter establish, their residence in New Granada;

(4) Those persons born in the territory of New Granada of alien parents, provided such persons establish their residence here;

(5) Emancipated slaves born in the territory of New Granada;

(6) Children of slaves born free by virtue of law in the territory of New Granada.

Article 6: The following are Granadines by naturalization:

(1) All persons who, although born outside the territory of New Granada, were domiciled therein at the time the place of their domicile was declared independent of Spain, and who have lived in submission to the Constitution of 1821;

(2) Children of a Granadine father or mother who were born outside the territory of New Granada and who have returned and declared that they wish to be considered Granadines in accordance with law;

(3) Aliens who have obtained letters of naturalization as well as those who, having already obtained them from the government of Colombia, are at present domiciled or hereafter may become domiciled in New Granada, provided that they have remained faithful to the cause of liberty;

(4) Persons born in any part of the territory of Colombia which is outside that of New Granada, provided they are already or shall hereafter become domiciled in the territory of New Granada.

Article 7: The duties of Granadines are:

(1) To live in submission to the Constitution and laws and to respect and obey the authorities established by them;

(2) To contribute to the public expenses;

(3) To serve and defend the country, even at the sacrifice of life if necessary;

(4) To watch over the preservation of public liberties.

TITLE II

CITIZENS OF NEW GRANADA

Article 8: All Granadines possessing the following qualifications are citizens:

- (1) Those who are married or twenty-one years of age;
- (2) Those who know how to read and write; however, this qualification shall not be enforced until 1850;
- (3) Those having an assured income who are not employed by another as a domestic servant or as a day laborer.

Article 9: Citizenship is forfeited:

- (1) For accepting employment from another country without the permission of the Granadine Government;
- (2) For entering the service of an enemy of New Granada, or for serving against New Granada;
- (3) For having been condemned to suffer corporal punishment, until restored to citizenship;
- (4) For selling one's vote or buying that of another;
- (5) For fraudulent bankruptcy.

Article 10: Citizenship is suspended:

- (1) For obtaining letters of naturalization in a foreign country;
- (2) For mental derangement;
- (3) For serving as a domestic or day laborer;
- (4) For nonpayment of sums due the National Treasury or any of the other public funds;
- (5) For being declared a vagabond;
- (6) While on trial for a criminal offense meriting corporal or infamous punishment from the time of arrest until acquitted or sentenced to a punishment of a different character;
- (7) By a judicial decree to that effect.

Article 11: All citizens shall have the right to elect and to be elected to the various public offices provided they have the qualifications required by the Constitution and laws.

TITLE III

GOVERNMENT OF NEW GRANADA

Article 12: The Government of New Granada is republican, popular, representative, elective, and responsible.

Article 13: For administration the Supreme Power is divided into the legislative, executive, and judicial branches, and none of these may exercise the powers granted by this Constitution to either of the other two, each branch being restricted to its own function.

Article 14: It is the duty of the Government to protect the liberty, security, property, and equality of Granadines.

Article 15: It is also the duty of the Government to protect Grana-
dines in the exercise of the Apostolic Roman Catholic religion.

TITLE IV

ELECTIONS

SECTION I

PARISH ELECTIONS

Article 16: Parish elections shall be held in each of the Parishes of the Republic, regardless of the size of its population, every two years on the day appointed by law.

Article 17: Without the necessity of awaiting orders, Parish Judges shall give the parochial voters eight days' notice of elections.

Article 18: Parochial voters are those inhabitants of the Parish District possessing the full rights of citizenship, it being understood that for voting purposes an inhabitant is one who has resided in the district for at least a year preceding the election, or has declared before the competent legal authority his intention to reside therein.

Article 19: Parish elections shall be presided over by the parochial authority designated by law, assisted by at least four persons chosen according to law, who must also be parochial voters.

Article 20: The object of Parish elections is:

(1) To vote for the Elector or Electors to which the Parish is entitled;

(2) To make any other elections required by law.

Article 21: The President and Vice-President of the Republic, Secretaries of State, Councilors of State, and Governors may not be Electors.

Article 22: Those receiving the greatest number of votes shall be considered constitutionally elected; in case of tie, it shall be decided by lot.

Article 23: In each Parish one Elector shall be chosen for every one thousand persons, and an additional Elector for a remainder of five hundred; but in a Parish the population of which does not number one thousand, one Elector nevertheless shall be chosen.

Article 24: Parish elections shall be open for a period of eight days, at the expiration of which they shall be considered closed.

SECTION 2

CANTON ELECTIONS

Article 25: The Electoral Assembly shall be composed of the Electors chosen in the Parishes of each Canton.

Article 26: To be an Elector, it is necessary:

- (1) To be a Granadine in the full exercise of the rights of citizenship;
- (2) To be married or twenty-five years of age;
- (3) To be a resident of one of the Parishes of the Canton;
- (4) To be able to read and write.

Article 27: When a person is chosen Elector by several Parishes, he shall accept the one in which he has received the greatest number of votes; in the event the votes should be equal in number, he shall accept election in the Parish in which he is domiciled; and if he does not reside in any of them, [the parish he is to represent] shall be decided by lot.

Article 28: Every year on the day appointed by law the Electoral Assembly shall meet in the main town of the Canton with at least two thirds of the Electors attending.

Article 29: As soon as the Assembly shall have been opened by the chief of the Canton, it shall elect a presiding officer from among its membership.

Article 30: The functions of Electoral Assemblies are:

- (1) To vote for the President and Vice-President of the Republic;
- (2) To vote for the Senator or Senators of the Province and their alternates (*suplentes*);
- (3) To vote for the Representative or Representatives of the Province and their alternates (*suplentes*);
- (4) To vote for the Deputy or Deputies to the Provincial House and their alternates (*suplentes*);
- (5) To make whatever other elections are prescribed by law.

Article 31: The election of each of the officers mentioned above shall be canvassed in a single sitting of the Assembly, which session shall continue until such canvass is completed.

Article 32: The term of office for Electors shall be two years. Vacancies caused by withdrawal as well as those arising from temporary causes shall be filled when necessary by those having the most votes in the election registers.

Article 33: The register of votes cast for the President and Vice-President of the Republic shall be sent, after scrutiny, to the Senate, and that for Senators and Representatives to the Provincial House.

Article 34: The election of Deputies to the Provincial House shall be completed by the Electoral Assembly itself, information thereof being sent to those elected.

Article 35: The Electoral Assemblies shall not continue in session for more than eight days.

SECTION 3

REGULATIONS COMMON TO BOTH ELECTIONS

Article 36: Elections shall be public, and no one carrying arms may attend them.

Article 37: Any act done in Parish elections or in the Electoral Assemblies which is not prescribed by this Constitution or by law, or done after the expiration of the period therein specified, is not only void, but contrary to public security.

Article 38: A special law shall regulate these elections and determine the formalities to be observed in them.

TITLE V

THE LEGISLATIVE POWER

SECTION I

CONGRESS

Article 39: The Legislative Power is exercised by a Congress composed of two Houses, one of Senators and the other of Representatives.

Article 40: Congress shall assemble annually on the first of March even when it has not been convoked, and its ordinary sessions shall last sixty days and may be prolonged to ninety days in case of necessity.

SECTION 2

THE SENATE

Article 41: The Senate of New Granada shall be composed of Senators elected on the basis of one for every sixty thousand persons, and an additional one for any remainder of thirty thousand. A Province lacking the requisite population shall nevertheless elect one Senator. Should the population increase to the point where the number of Senators shall exceed forty, the ratio provided in this article shall from time to time be changed by law in order that the size of the Senate may never exceed this number; but should the population diminish so that the number of Senators would be less than twenty-five, the ratio shall be proportionately diminished so that the membership shall never be below this number.

Article 42: Should an individual be chosen Senator by the Province in which he resides as well as by the Province in which he was born, he

shall accept the election of the former. The term of office for Senators shall be four years, one half of the membership being renewed every two years.

Article 43: To be Senator, it is necessary:

(1) To be a Granadine by birth and in the full exercise of the rights of citizenship;

(2) To be thirty-five years of age;

(3) To be a resident or a native of the Province where the election takes place;

(4) To have resided in the Republic for the four years immediately preceding the election; however, this requirement shall not apply to those who have been absent in the service of the Republic or absent on account of their devotion to the liberty and independence of the country;

(5) To be the owner of real property having an unencumbered value of four thousand pesos, or in default of this, an annual income of five hundred pesos accruing from landed property, or an income of eight hundred pesos accruing from some employment or from the exercise of a trade or profession.

Article 44: Those Granadines who were settled in any of the towns of New Granada at the time the towns declared their independence of Spain shall not be required to be Granadines by birth to be elected Senators provided they have remained faithful to the cause of independence and liberty, and provided they have been continuously domiciled in the territory of the country for the ten years immediately preceding the election; this last condition, however, shall not extend to those who have been absent in the service of the Republic or on account of their devotion to the independence and liberty of the country.

Article 45: The Senate shall take cognizance only of accusations brought by the House of Representatives. If the accusation concerns official conduct, the Senate may not impose any penalties on the accused other than suspension or removal from office, or at most to declare him temporarily or permanently incapable of holding any office of confidence in the Republic; however, the accused shall be subject to indictment, trial, and sentence by competent Tribunals should his act entail other penalties prescribed by law.

Article 46: When the accusation does not refer to the official conduct of the accused, the Senate shall restrict itself to deciding whether the accusation made by the House of Representatives is or is not well founded, and should the decision be in the affirmative, the accused shall be handed over to the competent Tribunal for trial.

Article 47: The Senate may entrust the prosecution to a committee composed of its own members, reserving to itself the sentence, which must be pronounced in open session; no one shall be condemned in these trials without a two-thirds vote of the Senators present.

Article 48: An accusation may be admitted to the Senate by a majority vote of the Senators present; whenever an accusation shall be admitted, the accused shall, by that act, be suspended from office.

Article 49: The process and formalities of these trials shall be regulated by a law which shall also point out the cases in which the punishments provided in Article 45 shall be inflicted.

SECTION 3

THE HOUSE OF REPRESENTATIVES

Article 50: The House shall be composed of Representatives elected in each Province by the Electoral Assemblies on the basis of one for every twenty-five thousand persons, and an additional one for any remainder of twelve thousand. Should the population increase to the point where the number of Representatives shall exceed eighty, the ratio provided in this article shall from time to time be changed by law in order that the number of Representatives shall never exceed this number; but should the population diminish so that the number of Representatives be less than forty, the ratio shall be proportionately diminished so that there shall never be fewer than this number.

Article 51: A Province whose population does not entitle it to one Representative on the basis of the ratio designated shall nevertheless elect one Representative.

Article 52: The term of office for Representatives shall be two years, one half being elected every year.

Article 53: Should any person be elected Representative by two Provinces at the same time, he shall accept the election of the Province in which he resides.

Article 54: To be elected Representative, it is necessary:

- (1) To be a Granadine in the full exercise of the rights of citizenship;
- (2) To be a native or resident of the Province in which the election takes place;
- (3) To be twenty-five years of age;
- (4) To be owner of landed property of an unencumbered value of two thousand pesos, or have an annual income of three hundred pesos accruing from real property, or in default of this, an annual in-

come of four hundred pesos accruing from some employment or from the exercise of some trade or profession;

(5) To have resided in the Republic for three years immediately preceding the election; but this requirement shall not exclude those who have been absent in the service of the Republic, or as a consequence of their devotion to the independence and liberty of the country.

Article 55: To be elected Representative, persons not natives of New Granada must:

(1) Be married to a native-born Granadine;

(2) Possess real property valued at ten thousand pesos;

(3) Have resided in the country for eight years immediately preceding the election; this requirement shall not exclude those who have been absent in the service of the Republic, or as a consequence of their devotion to the independence and liberty of the country.

Article 56: Persons not natives of New Granada but who were domiciled therein at the time the town in which they resided effected its political emancipation from Spain may be elected Representatives provided that after the revolution they submitted to the Constitution of 1821, that they possess the qualifications required of native Granadines, and that they have remained constantly faithful to the cause of liberty and independence.

Article 57: Functions peculiar to the House of Representatives are:

(1) To accuse before the Senate on its own initiative or at the instance of any citizen the President of the Republic or the person who may be exercising the executive function in all cases of misconduct in the exercise of his duties, or of any crime meriting corporal or ignominious penalty;

(2) To accuse in like manner Secretaries of State and Justices of the Supreme Court for any misconduct in the discharge of their respective duties;

(3) To accuse in like manner all public officials for any misconduct in the exercise of their duties, provided that there is no accusation for any delinquency pending before the ordinary Tribunals; or to require the competent authorities and Tribunals to proceed in the discharge of their duties in such cases.

SECTION 4

PROVISIONS COMMON TO BOTH HOUSES

Article 58: The Senate and House of Representatives shall not open their sessions without the attendance of two thirds of their respective members; but in any case, those attending, whatever their number

may be, shall meet and compel the attendance of absent members by fines and in the manner provided by law.

Article 59: The Houses shall not continue their sessions without the attendance of two thirds of the members present in the place of meeting, provided that those two thirds are not less than the absolute majority of all the members.

Article 60: The Houses shall not meet in joint session except to canvass and confirm the elections of the President and Vice-President of the Republic, to receive their oaths of office, to accept or reject their resignations, and to grant or refuse their leaves of absence; to elect Councilors of State, to accept or reject resignations of Councilors of State and of Justices of the Supreme Court, and for all other purposes which the Constitution and laws prescribe. They shall never meet in joint session for the purpose of deliberating or resolving upon those matters enumerated in Article 74.

Article 61: The Houses shall hold their sessions in the same town, and neither shall suspend its sessions for more than two days, or repair to any other place without the consent of the other.

Article 62: Vacancies which may occur in the Houses from death, resignation, expulsion, or any other cause shall be filled by the proper alternates (*suplentes*); and when the latter are vacated for similar causes, the Governor of the Province, upon demand of the House concerned, shall call an extraordinary meeting of the Electoral Assemblies to elect persons to fill the vacancies.

Article 63: The declinations of persons elected Senator or Representative shall be heard by the proper Provincial House, which shall pass upon them; but if the said House is not in session, they shall be heard and decided upon by the Governor of the Province; retirements from the post of Senator and Representative, after such posts have been accepted, shall be heard and disposed of by the respective Houses of Congress.

Article 64: The Houses shall have the power of expelling members for those offenses which according to law deserve that penalty; but at least two thirds of the members present shall agree before it is enforced.

Article 65: The sessions of both Houses shall be public, but they may be secret when the Houses deem it necessary.

Article 66: Each House shall be installed and open its sessions separately, each shall decide questions concerning the qualifications of its members, and each shall draw up the regulations for the governance of the House and the dispatch of its business. The Houses shall have power to punish such of their members as infringe the regulations

by whatever penalties the Houses may establish; however, they shall deliver members who have committed any of the ordinary crimes over to the competent Judge.

Article 67: The following may not be elected Senators or Representatives: the President and Vice-President of the Republic, Secretaries and Councilors of State, Justices of the Supreme Court of Justice and of the District Tribunals, or any other person exercising jurisdiction or authority in any of the Provinces at the time the election is held.

Article 68: Public officials who are removable at the pleasure of the Executive are eligible to the Senate or House of Representatives; but if they accept election, their former office is thereby vacated.

Article 69: While the sessions last and during the time necessary for proceeding thereto and for returning home, Senators and Representatives may not be accused or arrested for any civil action, or prosecuted or imprisoned for any criminal action until the House to which they belong has suspended them from office and delivered them to the competent Tribunal, unless they have been taken *in flagrante delicto* for an offense meriting corporal punishment.

Article 70: Senators and Representatives shall not be responsible at any time or to any authority for the speeches and opinions they may have delivered in the Houses.

Article 71: Senators and Representatives are representatives of the Nation and not of the Province which elects them; they shall receive neither orders nor instructions from the Electoral Assemblies or from any other body.

Article 72: During their incumbency Senators and Representatives shall not accept any position or office which is within the power of the Executive to grant.

Article 73: When the same person is elected both Senator and Representative, he shall accept the office of Senator.

SECTION 5

POWERS OF CONGRESS

Article 74: The following are the exclusive powers of Congress:

- (1) To vote appropriations in each annual session after studying the estimates submitted at the beginning of the session by the Executive through the Secretary of the Treasury;
- (2) To levy the national imposts, duties, and taxes;
- (3) To enact necessary measures for the preservation, administration, and alienation of the national property;

- (4) To contract debts on the credit of New Granada;
- (5) To determine and make uniform the weight, value, type, and denomination of money;
- (6) To fix uniform weights and measures;
- (7) To establish necessary Tribunals and Courts;
- (8) To create or abolish public offices and to determine, diminish, or augment their salaries;
- (9) To grant personal rewards to those who have performed great services for the Republic;
- (10) To enact naturalization laws;
- (11) To decree public honors to the memory of great men;
- (12) To fix annually the size of the land and sea forces and the manner of raising them, determining their numbers in time of peace and any increases which may be necessary in time of war; or in case of armed insurrection or sudden invasion, to decree the organization and recruitment of the armed forces and also the building and equipment of the fleet;
- (13) To declare war and make peace upon information submitted by the Executive;
- (14) To give consent and approval to public treaties and conventions entered into by the Executive;
- (15) To foster and promote public instruction, advancement of arts and sciences, and institutions of public utility, and to grant for a limited time exclusive privileges for their support and encouragement;
- (16) To grant general pardons for any grave reason of public convenience;
- (17) To select the seat of government and change it when necessary;
- (18) To create new Provinces and Cantons, abolish existing ones to form others from those already established, and to fix their boundaries in any manner conducive to better administration for reasons submitted by the Executive after granting a hearing to the Provincial Houses;
- (19) To permit or refuse the passage of foreign troops through the territory of the Republic;
- (20) To grant or refuse permission to fleets or squadrons of another nation to remain in the ports of the Republic for more than two months;
- (21) To decree the enlistment and organization of the National Guard, and to order it on active duty when necessary;

(22) To watch over the collection and expenditure of the national revenue, and to examine each year the accounting thereof submitted by the Executive through the Secretary of the Treasury to the Congress for its approval or rejection;

(23) To organize the national credit;

(24) To draw up codes of all kinds, and to enact laws and decrees necessary for the regulation of the different branches of the administration;

(25) To interpret, amend, and repeal existing legislation.

Article 75: It is also a power of Congress to canvass and if found valid to confirm the elections of President and Vice-President of the Republic; to elect Councilors of State and to accept or reject the resignations offered by them as well as those of the Justices of the Supreme Court of Justice.

Article 76: Congress shall not delegate to one or more of its members or to any other officer, functionary, or person any of the powers given it by this Constitution except in those cases where the Constitution expressly permits the delegation of such powers.

SECTION 6

CONCERNING THE ENACTMENT OF LAWS

Article 77: Laws and decrees of Congress may originate in either of the two Houses on the proposal of its members or by the Council of State.

Article 78: Every bill or decree admitted to debate shall be debated in three separate sittings with an interval of one day at least between each of them.

Article 79: If the bill is declared urgent, this last formality may be dispensed with. The declaration of urgency and the reasons offered to justify it shall be sent to the other House along with the bill or decree in order that it may be examined. If the second House does not believe the declaration of urgency is justified, it shall return the bill to the first House to go through the regular legal procedure there.

Article 80: A bill or decree which has been rejected in either of the two Houses shall not again be brought before them until the following session of Congress; this regulation, however, shall not prevent one or more of the provisions from forming part of another bill.

Article 81: Bills or decrees approved in one House according to the procedure prescribed by this Constitution shall pass to the other House with an account of the days in which they were discussed; and the

second House, observing the same formalities, shall give or refuse its consent thereto, or introduce such amendments, additions, or modifications as it shall judge necessary.

Article 82: If the House in which the bill originated believes that the proposed amendments, additions, or modifications are not well founded, it may insist a second time with new arguments upon the admission of the bill in its original form.

Article 83: Although approved by both Houses, no bill or decree shall have the force of law unless sanctioned by the Executive. If the latter approves it, it shall be published as law; if he objects to it, he shall return it to the House of origin along with his objections within eight days after receiving it.

Article 84: Bills having been passed as urgent business by both Houses shall be sanctioned or objected to by the Executive within two days, and he may not pass upon the question of urgency.

Article 85: The respective House shall examine the objections of the Executive and shall reconsider the bill; if the objections are well founded and affect the whole bill, it shall be placed in the archives and shall not be again brought up for discussion until the next session of Congress; but if the objections are limited only to certain parts, they shall be taken into consideration and measures respecting them shall be deliberated upon.

Article 86: If two thirds of the members present in said House consider that the objections do not affect the bill *in toto*, such decision shall be sent to the other House. If the latter House shall find the Executive's objections well founded, it shall communicate the same to the House of origin and the bill shall be placed in the archives under the same conditions as set forth in the preceding article; but if two thirds of the members present in the second House also do not find the objections well founded, the bill shall be returned to the Executive for his sanction, which may not be denied under these circumstances.

Article 87: If after the expiration of the time provided in Article 83, and also under conditions of urgency in Article 84, the Executive shall not have returned the bill or decree accompanied by his objections, it shall have the force of law and shall be promulgated as such unless Congress shall in the meantime have suspended its sessions or adjourned, in which case it shall be presented during the first eight days of the next session.

Article 88: The participation of the Executive in the manner provided in the preceding articles shall be necessary for all acts and resolutions of Congress; the following are, however, excepted:

- (1) Those deferring sessions until another time, or those moving the sessions to another place;
- (2) Those relating to elections, resignations, and leaves of absence;
- (3) The rules and regulations of the two Houses;
- (4) And any other acts in which the concurrence of both Houses is not necessary.

Article 89: Upon forwarding a bill or decree to the Executive, the number of days on which it was discussed shall be specified; should the Executive find that the requirements for discussion have not been observed, he shall return the bill to the House in which the omission occurred, or to the House of origin if such omission has been noted in both.

Article 90: When a bill is sent to the Executive for his sanction, there shall be two copies signed by the Presidents and Secretaries of the two Houses, and it shall be presented to him by a committee.

Article 91: When a bill is agreed to or objected to by the Executive in accordance with Articles 83 and 84, a copy along with his decision shall be returned to each House through its Secretary, and in case he sanctions the bill, it shall be registered and placed in the archives of the House of origin, and in the event the Executive disapproves, the bill shall take the course prescribed in Articles 85 and 86.

Article 92: Congress shall head all legislative acts which it enacts with this formula: *The Senate and House of Representatives of New Granada, in Congress assembled, etc.*

TITLE VI

THE EXECUTIVE POWER

SECTION I

ELECTION, TERM, AND QUALIFICATIONS OF THE PRESIDENT AND VICE-PRESIDENT OF THE REPUBLIC

Article 93: The Executive Power of the Republic shall be entrusted to a person known as the President of New Granada.

Article 94: There shall be a Vice-President who shall exercise the functions of President in case of death, removal, or resignation until a successor shall be chosen, which shall take place at the next meeting of the Electoral Assemblies. He shall also exercise the same functions in case of absence, illness, or any other temporary incapacity of the President.

Article 95: The President of the Republic shall be elected by the

Electoral Assemblies. When no one obtains an absolute majority of the votes cast by the Electoral Assemblies, Congress shall take from the registers the three candidates who have the greatest number of votes and from among them choose a President of the Republic.

Article 96: This election shall be made in a public continuous sitting and by secret balloting. If on the first ballot none of the candidates obtains the required two-thirds vote of the members present, subsequent balloting shall be confined to the two who on the first ballot obtained the most votes; and if the said majority is not then obtained, the voting shall be repeated until such majority is had.

Article 97: The election of the Vice-President shall be made two years after that of the President, and it shall be made in the same manner.

Article 98: Should the Vice-President, while exercising the power of President, vacate said office because of death, removal, or resignation, the President of the Council of State, with congressional approval, shall fill the vacancy until another election of President and Vice-President, which election shall be immediately ordered by Congress. Those chosen at such election shall remain in office until the next regular election. The President of the Council shall also fill the place of the Vice-President when exercising the Executive Power in case of the latter's absence, illness, or other temporary incapacity.

Article 99: To be President or Vice-President, it is necessary:

(1) To have been born in one of the Provinces and to be in the full exercise of the rights of Granadine citizenship;

(2) To be thirty-five years of age;

(3) To have resided in the Republic for four years immediately preceding the election; this does not exclude those who have been absent in the service of the Republic, or as a result of their devotion to the independence and liberty of the country;

(4) To possess real property of an unencumbered value of four thousand pesos, or have an annual income of five hundred pesos accruing from real property, or an annual income of eight hundred pesos accruing from some employment or from the exercise of some business or profession.

Article 100: The President- and Vice-President-elect shall assume office on April 1, taking the customary oath, which shall be administered by the President of the Congress in the presence of that body; if Congress is not in session, the oath shall be administered by the President of the Council of State in the presence of that body.

Article 101: Should the new President not have taken the oath on the first of April, the former President's incumbency shall nevertheless cease on that day; and the person designated in Articles 94 and 98 shall enter upon the exercise of the Executive Power.

Article 102: The President and Vice-President of the Republic shall continue in office for four years, reckoning from the day on which, according to Article 100, they took the required oath; and they may not be re-elected to the same offices until the expiration of an intervening term.

Article 103: Those who have been exercising the Executive Power for at least two years immediately preceding an ordinary election are not eligible for election to the offices of President or Vice-President of the Republic for the term immediately following such election.

Article 104: The President and Vice-President shall receive for their services such compensation as shall be provided by law, which shall be neither increased nor diminished during their tenure.

SECTION 2

FUNCTIONS, DUTIES AND PREROGATIVES OF THE PRESIDENT OF THE REPUBLIC

Article 105: The President is the administrative head of the Republic, and as such it is his duty to maintain internal order and peace and to protect the country against foreign attack.

Article 106: The duties of the Executive shall be:

(1) To sanction the laws and decrees of Congress and to issue all rules and regulations necessary for their execution;

(2) To see to the strict observance of the laws and Constitution, and to take care that all public functionaries fully discharge their duties;

(3) To convoke Congress at the times prescribed by the Constitution, and, on the advice or petition of the Council of State, to convene it in extraordinary session whenever the welfare of the Republic requires it;

(4) To direct the land and sea forces, and to distribute them for the defense and security of the country; but never to command them in person;

(5) To declare war with the previous authorization of Congress;

(6) To appoint and remove freely the Secretaries of State;

(7) To appoint, with the previous consent of the Senate, Army chiefs from the rank of Lieutenant Colonel to the highest in the service;

(8) To appoint other Army officers according to law;

(9) To appoint, with the advice of the Council of State, Ministers Plenipotentiary, Envoys, and all other Diplomatic Agents and Consuls-General;

(10) To direct diplomatic negotiations, enter into treaties and conventions, and, with the previous consent of Congress, ratify the same;

(11) To appoint Judges of the District Courts with the advice of the Council of State from ternaries submitted by the Supreme Court of Justice;

(12) To appoint all other officers whose appointment is not assigned by law to some other authority;

(13) To appoint Governors of Provinces from among persons recommended by the Provincial Houses;

(14) To grant retirement and leaves of absence to the military, and to accept or reject resignations of officers from the rank of Ensign to officers of highest rank as determined by law;

(15) To grant letters of marque in accordance with congressional determination;

(16) To grant sailing licenses;

(17) To see that justice is administered by the Tribunals and Courts and that their sentences are executed;

(18) To commute sentences of capital punishment with the advice of the Council of State, provided always that it be done for some special reason of public expediency or on the recommendation of the Court which handed down such sentence;

(19) To see to the collection and expenditure of public taxes and revenues as provided by law, and to present annually to Congress through the Secretary of the Treasury detailed accounts thereof;

(20) To remove from office with the advice of the Council of State those employed in the executive branch, whether they be political or finance officers, all of whom shall be considered as holding commissions;

(21) To suspend from office those employed in the executive branch, whether they be political or finance officers, should they violate the laws, decrees, or orders of the Executive, provided they are placed at the disposition of the competent authority within forty-eight hours with a statement and the documents explaining the reasons for their suspension in order that they may be put on trial; this, however, shall not invalidate the power of removal given by law to other officials and to the Courts for the removal of their own officials.

Article 107: The President of the Republic may not:

- (1) Banish any Granadine from the country, deprive him of his liberty, or impose any penalty whatever;
- (2) Obstruct the course of judicial proceedings, or impede the progress of cases being tried according to procedure prescribed by law;
- (3) Prevent elections provided for by this Constitution, or prevent persons elected from entering upon their duties;
- (4) Dissolve the Houses or suspend their sessions;
- (5) Leave the country while in the exercise of the Executive Power or for one year thereafter;
- (6) Exercise the Executive Power while absent from the capital in some other part of the country;
- (7) Admit aliens to military service with the rank of officer or chief without the consent of Congress.

Article 108: In case of grave danger arising from internal disorder or foreign attack which menaces the security of the Republic, the Executive shall meet with Congress, or, if it is not in session, with the Council of State, to consider the urgency of the situation as reported by the Executive and to grant him in whole or in part the following powers with such limitations as are deemed necessary:

- (1) To call into active service such part of the National Guard as may be necessary;
- (2) To collect in advance at a fair discount as much of the national taxes and revenues as may be deemed necessary, or to raise a sufficient sum by a loan if the ordinary revenues are inadequate to cover expenses, designating at the same time the funds from which and the time within which repayment shall be made;
- (3) Upon receipt of information that plots are being made against the peace and security of the Republic, to issue orders for the appearance or arrest of suspected persons in order to interrogate them or have them interrogated and to turn them over within seventy-two hours to the competent Judge, to whom shall be forwarded the documents setting forth the reasons for the arrest together with an account of the proceedings which have taken place;
- (4) To grant amnesties and individual or general pardons.

Article 109: The powers that may be granted to the Executive according to the foregoing article shall be limited solely to the time and objects indispensably necessary for the re-establishment of the peace and security of the Republic, and the Executive shall render to Congress at its next session an account of the manner in which they were exercised.

Article 110: The President of the Republic shall be responsible for all infractions of the Constitution and laws and for the abuse of powers entrusted to him by Article 108 of this Constitution, as well as any other misconduct in the exercise of his functions.

Article 111: On the opening of the annual session of Congress, the President of the Republic shall send to both Houses a report of the political and military state of the Republic, and of its revenues, expenses, and resources, pointing out improvements and reforms which should be made in each branch.

SECTION 3

SECRETARIES OF STATE

Article 112: To handle all administrative business there shall be at most three Secretaries:

- (1) One for Home and Foreign Affairs;
- (2) One for Finance;
- (3) One for War and Marine.

These Ministries shall be organized and regulated by law.

Article 113: The office of Secretary of State is purely civil. The Executive shall be able to assign temporarily two Ministries to one Secretary.

Article 114: The Secretaries of State shall be the medium for the communication of all executive orders relating to their several Ministries. No order except those issued in this manner and no decree, provision, or regulation not authorized by the proper Secretary shall be obeyed by any public functionary or private person.

Article 115: With the consent of the Executive, the Secretaries of State shall give the Houses of Congress whatever information they may require concerning the business of their respective Ministries except that which should not be made public. They may attend and participate in the debates, and they shall attend when called by either House, but they shall not be allowed to vote.

Article 116: The Secretaries of State shall inform each House of Congress annually within the first six days of each session of the condition of affairs in their respective Ministries.

Article 117: The Secretaries of State shall be responsible for any misconduct in the exercise of their functions, and for authorizing a decree or resolution or signing an order contrary to the Constitution or laws; nor shall any verbal or written instruction of the Executive exempt them from responsibility.

Article 118: Congress may make such reductions in the number of Ministries as experience may recommend or circumstances require.

Article 119: To be Secretary of State, it is necessary:

(1) To be a Granadine by birth and in the full exercise of the rights of citizenship;

(2) To have been a resident of the Republic for the four years immediately preceding appointment; however, this requirement shall not exclude those who have been absent in the service of the Republic or because of their devotion to liberty.

SECTION 4

COUNCIL OF GOVERNMENT

Article 120: The Vice-President of the Republic and the Secretaries of State shall form the Council of Government, which shall advise the President of the Republic on all administrative matters; such advice shall not be binding upon the President of the Republic.

SECTION 5

COUNCIL OF STATE

Article 121: There shall be a Council of State composed of seven Councilors chosen by the Congress by an absolute majority; but in no case shall Congress choose more than one Councilor born in any given Province. Secretaries of State shall have the right to attend and take part in the discussions and shall attend when called by the Council, but they shall have no vote.

Article 122: Congress shall indicate by an absolute majority which one shall preside over the Council; the Council itself shall by an absolute majority vote decide who shall be the presiding officer in the absence of the President chosen by Congress.

Article 123: The term of office for the members of the Council of State chosen by Congress shall be four years, one half being chosen every two years.

Article 124: The Council shall keep an accurate record of its opinions and resolutions, and it shall send to Congress each year during the first ten days of the session an exact copy thereof, withholding only such matters as require secrecy so long as secrecy shall be necessary.

Article 125: The members of the Council shall be responsible for the opinions of the Council and for any misconduct in office.

Article 126: During their incumbency the members of the Council shall not receive for themselves nor solicit for others any employment,

commission, pension, or reward whatsoever from the Executive. Their compensation shall be determined by law.

Article 127: To be a Councilor of State it is necessary to be a native-born Granadine in the full exercise of the rights of citizenship and to have all the other qualifications required to be a Senator.

Article 128: The Council of State shall have power:

(1) To give its opinion concerning the sanctioning of laws and all important and general business of public administration;

(2) To prepare bills and codes for presentation to Congress;

(3) To deliberate, give its opinion, and grant or withhold its consent in those matters provided for by this Constitution;

(4) To present to the House of Representatives ternaries for the appointment of Justices of the Supreme Court of Justice, which ternaries shall be composed from those received from the Provincial Houses.

Article 129: The Executive shall not be obliged to follow the advice of the Council of State.

TITLE VII

THE JUDICIAL POWER

Article 130: Justice shall be administered by a Supreme Court of Justice and such other Tribunals and Courts as may be established by law.

SECTION I

SUPREME COURT OF JUSTICE

Article 131: In the capital of the Republic there shall be a Supreme Court of Justice whose powers shall be:

(1) To take cognizance of all cases involving Ministers Plenipotentiary and Diplomatic Agents accredited to the Government of the Republic as may be permitted by international law, or provided for by laws and treaties;

(2) To take cognizance of all cases involving the question of responsibility brought against the Ministers Plenipotentiary, Diplomatic Agents, and Consuls of the Republic for misconduct in office;

(3) To take cognizance of disputes arising out of contracts or engagements which the Executive entered into either directly or through his agents by special order;

(4) To take cognizance of actions brought against the President and Vice-President of the Republic for common crimes after suspension from office in accordance with the provisions of Article 45;

(5) To take cognizance of all charges of responsibility brought against public functionaries who have been suspended from office by the Senate, regard being had for the procedure provided in Article 45 of this Constitution;

(6) To hear questions concerning the interpretation of any law which may be directed to it by the Superior Tribunals and, acting through the Executive, to advise Congress of its opinion thereon.

Article 132: The law shall establish the instance, form, and cases in which the Supreme Court of Justice shall take cognizance of the above-mentioned matters and of any others which may be referred to it.

Article 133: The Council of State shall propose directly to the House of Representatives three names for each seat on the Supreme Court of Justice. The House shall reduce this number to two and present them to the Senate, and the Senate shall choose a Justice from these two. The Council of State shall formulate its ternaries from among individuals proposed in the ternaries submitted by the Provincial Houses.

Article 134: When a vacancy occurs on the Supreme Court of Justice, the Executive shall notify the Provincial Houses so that at their next ordinary session they may remit said ternaries, which shall be printed.

Article 135: Until the vacancies are filled in accordance with the preceding article, the Executive shall appoint substitutes with the consent of the Council of State.

Article 136: The Justices of the Supreme Court of Justice so long as they are in office and for one year thereafter shall not accept for themselves nor solicit for others any employment, office, commission, pension, or favor whatsoever from the Executive.

Article 137: The Justices of the Supreme Court of Justice shall be responsible and subject to trial before the Senate in accordance with Article 45 for any misconduct in the exercise of their functions.

Article 138: To be a Justice on the Supreme Court of Justice, it is necessary:

(1) To be a Granadine in the full exercise of the rights of citizenship;

(2) To be thirty-five years of age;

(3) To have been a Judge in one of the Courts of the Republic for not less than four years; or to have practiced law creditably for not less than eight years.

SECTION 2

OTHER TRIBUNALS AND COURTS

Article 139: To facilitate the most prompt administration of justice the territory of the State shall be divided into judicial districts in which shall be established Tribunals whose powers and membership shall be determined by law.

Article 140: To be a member of these Tribunals, it is necessary:

(1) To be a Granadine in the full exercise of the rights of citizenship;

(2) To be a lawyer in good standing;

(3) To have been a Judge of first instance or court assistant (*Asesor*) for at least three years, or to have practiced law creditably for at least four years.

Article 141: The members of these Tribunals shall be appointed by the Executive with the consent of the Council of State from recommendations in ternary by the Supreme Court of Justice, which lists shall be made from ternaries forwarded by the respective Provincial Houses.

Article 142: The members of these Tribunals shall be responsible before the Supreme Court of Justice for misconduct in office and in the manner determined by law.

Article 143: The law shall organize inferior Courts and prescribe their duties and the qualifications requisite for their members.

SECTION 3

REGULATIONS COMMON TO THE SUPREME COURT AND
OTHER TRIBUNALS AND COURTS

Article 144: Justices and Judges shall not be suspended from office except for an accusation legally preferred and admitted, or removed except in consequence of a sentence pronounced against them in accordance with law.

Article 145: Justices of the Supreme Court of Justice and Judges of the District Tribunals shall remain in office for four years; one half of them shall be selected every two years, and they shall not be eligible for reappointment.

Article 146: The Tribunals and Courts shall exercise no other function than that of judging and seeing that their sentences are executed.

Article 147: In their decisions, all Tribunals and Courts are obliged

to cite the law under which they pronounce judgment or the principles on which their decisions are founded.

Article 148: There shall be no more than three instances in any case.

Article 149: The sessions of the Tribunals shall be public and the voting shall be open and oral.

TITLE VIII

INTERNAL GOVERNMENT OF THE REPUBLIC

SECTION 1

GOVERNORS AND CHIEFS OF CANTONS

Article 150: The territory of the Republic shall be divided into Provinces, the Provinces into Cantons, and the Cantons into Parishes.

Article 151: The head of the government in each Province shall be an official known as Governor, who shall be a subordinate of the Executive and his immediate constitutional agent, and he shall communicate with the Executive through the proper Secretary of State.

Article 152: In all that concerns the order and security of the Province and its political and economic governance, all the public functionaries of whatever class and denomination residing within the same Province shall be subordinate to the Governor.

Article 153: To be Governor, it is necessary:

(1) To be a Granadine in the full exercise of the rights of citizenship;

(2) To be thirty years of age;

(3) To have resided in the territory of the Republic for the three years immediately preceding appointment; but this requirement shall not exclude those who have been absent in the service of the Republic or because of their devotion to the independence and liberty of the country.

Article 154: The term of office for Governor shall be four years.

Article 155: Each Canton shall be governed by an official subordinate to the Governor whose title and term of office shall be fixed by law, in which law shall also be determined the duties of the functionaries comprehended in this section.

SECTION 2

PROVINCIAL HOUSES AND MUNICIPAL COUNCILS

Article 156: In each Province there shall be a Provincial House composed of Deputies from all the Cantons in the Province. The law

shall fix the number of Deputies of which each House shall be composed so that no Province shall have less than nine or more than twenty-one.

Article 157: The term of office for Deputies shall be two years, one half being elected every year.

Article 158: To be a member of a Provincial House, it is necessary:

(1) To be a Granadine in the full exercise of the rights of citizenship;

(2) To be twenty-five years of age;

(3) To be a native or resident of the Canton in which elected.

Article 159: Those ineligible to be Representatives and Senators in accordance with Article 67 of this Constitution shall also be ineligible for membership in the Provincial Houses, nor shall Judges of first instance (*Jueces letrados*) be eligible during their term of office.

Article 160: The functions of the Provincial Houses are:

(1) To complete the elections of Senators and Representatives when no candidate receives an absolute majority of the votes cast by the Electoral Assemblies, after the registers of such elections have been submitted to them, by taking from said registers the names of the three persons who have obtained the greatest number of votes and choosing one from this number. Such an election shall take place in a public and continuous session and by secret ballot; if on the first ballot no one has two thirds of the votes of the members present, this number being necessary for election, the balloting shall then be confined to the two highest and shall continue until the requisite majority is obtained;

(2) To propose to the Council of State three individuals for each nomination to membership on the Supreme Court of Justice;

(3) To submit to the Supreme Court of Justice nominations in ternary for Judges of the Tribunals of the several judicial districts;

(4) To submit to the Executive a list of six persons from whom one shall be selected Governor;

(5) To determine the contingent of men which each Province should contribute to the Army and Navy;

(6) To report infractions of the Constitution and laws committed by any of the authorities;

(7) To levy taxes and contributions necessary for the provincial services; but said taxes and contributions shall not go into effect until approved by Congress;

(8) To fix annually the estimates of expenses needed for the services (*servicio económico*) of the Province;

(9) To promote the advancement and prosperity of the Province, its policies, public works, and any other establishments of utility, charity, and convenience paid for and sustained by its own revenues;

(10) To see to the proper collection, custody, and distribution of provincial revenues, and to examine and approve definitively each year the accounts of collection and disbursement of the same;

(11) To examine and approve definitively each year the accounts of collection and disbursement of the municipal revenues of the Cantons;

(12) To discharge any other duties assigned by law.

Article 161: The Provincial Houses shall not have the power to suspend, modify, or interpret the laws and resolutions of Congress, or to perform any executive or judicial act or any other function not given them by the Constitution or law. Their deliberative resolutions shall be annually submitted to Congress through the President of the Republic, and they shall be valid unless expressly disapproved. Any other procedure shall be considered contrary to public order and security.

Article 162: Congress shall have power to annul all acts and resolutions of Provincial Houses; the Executive may suspend them when they are contrary to the Constitution or laws or not within the competency of the Houses; but he shall make a report to the next Congress for its definitive resolution; the Governor of the Province shall also have the power to suspend them, but he shall immediately advise the President of the Republic of having done so in order that the President may take measures deemed proper.

Article 163: The Provincial Houses shall meet at least once a year at times stated by law. The ordinary sessions shall continue for twenty days, which period may be prolonged for ten days more when necessary.

Article 164: The sessions of the Provincial Houses shall be from day to day and public; however, they may be held in secret when the Houses consider it expedient.

Article 165: The organic law of these Houses shall designate the place of meeting in their respective Provinces and the compensation of their members.

Article 166: Congress shall grant a certain amount of uncultivated land for the benefit of the funds and revenues of each Province.

Article 167: The provisions of Article 66 shall also apply to the Provincial Houses.

Article 168: There shall be Municipal Councils in the capitals of the Provinces and in such towns in the Cantons as the Provincial Houses

may judge proper. The law shall provide all regulations relative to their organization and functions.

TITLE IX

THE ARMED FORCES

Article 169: The essential duty of the armed forces is obedience; they shall not have the power to deliberate.

Article 170: The function of the armed forces is to defend the liberty and independence of the country, maintain public order, and secure the observance of the Constitution and laws.

Article 171: There shall not be a larger permanent armed force than is indispensably necessary.

Article 172: Individuals composing the armed forces, both land and sea, when on campaign shall be regulated by military ordinances; but when in garrison, they shall be subject to such ordinances only for offenses purely military.

Article 173: When persons in the National Guard are in actual service, they are subject to military ordinances in the same manner as provided in the preceding article; they are to be considered in actual service when they are in quarters and receive pay from the State, although some may be serving gratuitously.

Article 174: The National Guard of each Province shall be under the orders of its respective Governor, who shall call it into service in such cases as are determined by law, or when the Executive orders him to do so with the consent of Congress, or the Council of State if the Congress is in recess; or without such authorization when needed in the Province to quell a sudden disturbance or repel an unexpected hostile invasion.

Article 175: The officers of the Army and Navy shall be Granadines, and the general officers shall be Granadines by birth.

Article 176: Military orders shall affect the country in no way except for those persons exclusively military and on actual duty.

Article 177: The law shall not create any other military offices than are indispensably necessary and shall grant no rank or promotion except for filling posts created by law.

TITLE X

GENERAL PROVISIONS

Article 178: All public functionaries are responsible for their conduct in the exercise of their functions conformably to the provisions of this Constitution and the laws.

Article 179: Every functionary and public corporation is prohibited to exercise any function or authority whatsoever other than that expressly delegated by this Constitution or laws.

Article 180: No one may be a public functionary in New Granada unless he is a Granadine in the full exercise of the rights of citizenship.

Article 181: Granadines are equal before the law, whatever may be their condition or employment.

Article 182: No Granadine shall be deprived of his rightful Judges, or tried by special commissions or extraordinary tribunals.

Article 183: No Granadine shall be arrested or committed to prison without sufficient cause founded upon the testimony of a creditable witness or upon other worthy evidence. When any person is discovered *in flagrante delicto*, he may be seized by anyone and taken immediately before a Judge.

Article 184: With the exception of cases of imprisonment resulting from a legal sentence or of correctional punishment, no one shall be imprisoned except for crimes carrying corporal punishment.

Article 185: The accused shall be put at liberty upon giving sufficient bail at any stage in the legal proceedings when it appears that corporal punishment shall not be applicable to his case.

Article 186: Within at least twelve hours after arrest or imprisonment, the Judge shall issue a signed order in which shall be stated the cause of such arrest or imprisonment, and whether or not the person shall be held incommunicado; the prisoner shall be given a copy of this order. The Judge who fails to do this, or the jailer who shall not demand such an order before the expiration of the twelve hours, shall be punished for arbitrary arrest. Neither shall use greater restraints or restrictions than are necessary for the detention of the person arrested or imprisoned.

Article 187: The warden or jailer shall not prohibit the person arrested from having communication with any other person without an express order from the Judge; such incommunicado shall continue only for the time indispensably necessary to prevent collusion with witnesses or accomplices.

Article 188: No Granadine shall bear testimony in any criminal case against his wife, his ascendants or descendants, and brothers and sisters, nor shall he be compelled on oath or under compulsion to give testimony against himself.

Article 189: No punishment shall be extended to an innocent person, however close may be his relationship to the guilty.

Article 190: No one shall be confined in any place which is not publicly and legally recognized as a prison.

Article 191: No Granadine shall be tried or punished except for violation of a law enacted prior to the commission of the crime, nor until after he has been summoned, heard, and legally convicted.

Article 192: No crime shall hereafter be punished by the penalty of confiscation; this shall not apply, however, to the forfeitures and fines imposed by law for certain crimes.

Article 193: Except for the contributions established by this Constitution and the laws, no Granadine shall be deprived of any of his property, nor shall it be applied to any public use without his personal consent. Should any public necessity, legally determined, require that the property of any Granadine be applied to such uses, a just compensation shall be made prior to such seizure.

Article 194: The military may not be quartered or lodged in the houses of other Granadines without the consent of the latter. The civil authorities shall, in accordance with law, provide lodgings for the officers and quarters for the troops.

Article 195: No kind of work, trade, or commerce which is not contrary to good morals shall be forbidden to Granadines, and all shall be able to employ themselves as they will, except in such occupations as may be necessary for the support of the State; consequently, they shall not be able to establish any body or corporation of trade, art, or business which may be an obstacle to the freedom of invention, instruction, or industry.

Article 196: The right of primogeniture and every species of entail is prohibited.

Article 197: No landed property of an inalienable character shall be allowed to exist in the State.

Article 198: All Granadines shall have the right to publish freely their thoughts and opinions through the press without previous examination, revision, or censorship of any kind, being responsible, however, before the law for that which is published.

Article 199: Trial for abuse of freedom of the press shall always be by jury.

Article 200: All Granadines shall have the right to settle their differences by arbitration at any stage of the proceedings, to change their residence, and to leave the Republic and return thereto provided they observe the formalities prescribed by law.

Article 201: The dwelling of a Granadine shall not be entered

except in cases and in accordance with the formalities prescribed by law.

Article 202: Correspondence and other papers shall not be intercepted at any time or opened except by competent authority and only in cases provided by law.

Article 203: All Granadines shall be entitled to demand their rights before persons entrusted with public authority provided their claims are urged with due respect and propriety; they shall be at liberty to communicate in writing with the Congress or the Executive concerning anything considered conducive to the public good; but no private individual or association may petition the authorities in the name of the People or arrogate to themselves the name of the *People*. Those who violate this provision shall be tried according to law.

Article 204: No one shall draw money from the public treasury for uses other than those determined by law and in conformity with the budget approved by Congress, which shall be published annually.

Article 205: No titles, appellations, or decorations of nobility or other hereditary distinctions or honors shall be allowed in New Granada.

Article 206: There shall not be in New Granada any sinecures or purely honorary positions. Public offices shall not be venal, inalienable, or hereditary; nor shall those holding office continue in them longer than during good behavior.

Article 207: No Granadine shall wear insignia, decorations, or distinctions which are not expressly allowed by law, or assume titles or appellations not established by it.

Article 208: Persons holding any office of confidence or honor in the Republic shall accept no title, gift, or emolument from any foreign king, prince, or nation without the consent of Congress.

Article 209: All aliens of whatever nationality shall be admitted to New Granada; they shall be entitled to the same protection of person and property as is extended to Granadines provided they respect the laws of the Republic.

Article 210: In all cases in which ternary lists are required by the Constitution or laws for the nomination of persons to public office, it shall be understood that the name of each candidate shall be placed upon a separate piece of paper with an account of his merits, past service, and qualifications.

TITLE XI

THE OATH FOR PUBLIC OFFICERS

Article 211: No public functionary or employee, whether civil,

political, ecclesiastical, or military, shall enter upon the exercise of his office without previously taking an oath to maintain and defend the Constitution and to execute faithfully and correctly the duties of his office.

Article 212: The President and Vice-President of the Republic shall take the oath in the manner prescribed in Article 100. The Presidents of the Houses of Congress shall take the oath in the presence of their respective Houses; the members of the Houses shall take their oaths before their Presidents; other functionaries and employees shall take theirs at the hands of the Executive or of the person charged by him with the duty of administering such oaths.

TITLE XII

CONCERNING THE INTERPRETATION OR REFORM OF THIS CONSTITUTION AND THE OBSERVANCE OF THE LAWS

Article 213: Congress shall resolve whatever doubts may arise concerning the interpretation of the laws or of any article or articles of this Constitution.

Article 214: Amendments of or additions to any article or articles of this Constitution may be proposed in either of the two legislative Houses. If the proposal is supported by at least one fifth of the members present and is admitted to debate by an absolute majority of votes, it shall follow the same procedure provided for ordinary bills. If the amendment or addition is accepted by a two-thirds vote of those present, it shall be sent to the other House.

Article 215: If the other House approves the amendment or addition in the same manner and by the same formalities prescribed in the preceding article, it shall be sent to the Executive for the sole purpose of being published and circulated.

Article 216: The Congress in the ordinary session of the succeeding year shall take into consideration the amendment or addition approved in the preceding session; if it is accepted by a two-thirds vote of the members present in accordance with the formalities provided in Article 214, it shall be considered a part of this Constitution and sent to the Executive for publication and execution.

Article 217: The Executive may make his own observations upon the doubtful meaning, modification, or interpretation of any of the articles of the Constitution.

Article 218: The power of Congress to amend this Constitution

shall never extend to the articles in Title III, which concerns the form of government.

Article 219: All laws and decrees registered in the Republic which were in force at the time of the publication of the Fundamental Law of New Granada are declared to be in full force and vigor, provided always that said laws and decrees are not contrary to this Constitution or to the decrees and laws which the present Convention has already established or shall hereafter establish.

TRANSITORY PROVISIONS

a. This Convention shall enact a special decree setting forth for the Executive and subsequent Legislatures the regulations and details which are to be followed for the celebration of pacts of alliance or of other kinds which may be entered into with other sections of Colombia.

b. This Convention shall elect the President and Vice-President of the Republic, who shall continue in office until their successors are chosen by the Electoral Assemblies in accordance with this Constitution.

c. The individuals so chosen shall be eligible for election to those offices for the first constitutional term in accordance with the regulations established in this Constitution.

d. During the opening days of the first congressional session lots shall be cast to determine which Senators' and Representatives' terms of office shall expire in order that the membership may be renewed by halves or by a lesser fraction as directed by this Constitution. In a similar manner the Council of State, the Supreme Court of Justice, the District Tribunals, and the Provincial Houses shall cast lots for the same purpose.

e. For the time being this Convention shall choose the Councilors of State, the Justices of the Supreme Court of Justice, and the Judges of the District Tribunals by a majority vote; those so chosen shall continue in office until successors are chosen in accordance with the regulations herein established.

f. The Vice-President of the Republic, who shall be chosen at the same time the Electoral Assemblies choose the first President, shall continue in office only two years.

g. The requirement in this Constitution that Army Generals must be native-born Granadines does not apply to those Generals now in New Granada who are inscribed as such on the military lists.

h. Notwithstanding the promulgation of this Constitution, the present Convention shall enact whatever laws it considers most necessary

for the establishment of the Constitution as well as on other important matters.

Done in the Constituent Convention of New Granada in Bogotá on the 29th of February, 1832, and of Independence the twenty-second.

The President of the Convention and Deputy for Santamarta, JOSÉ MARÍA, Bishop of Santamarta.

The Vice-President, Deputy for Cartagena, MAURICIO JOSE ROMERO. Deputies for Antioquia: *Juan de Dios de Aranzazu, Carlos Alvarez, Alejandro Vélez, Estanislao Gómez, José María de la Torre, Luis Lorenzana, Dr. Félix Restrepo, Miguel Uribe Restrepo.* Deputies for Bogotá: *Vicente Azuero, M. Escobar, Francisco P. López Aldana, Romualdo Liévano, Andrés Marroquín, José Félix Merizalde, José María Mantilla, Gabriel Sánchez, Bernardino Tobar, Miguel Tobar, Policarpo Uricoechea, Manuel Antonio del Castillo.* Deputies for Cartagena: *Juan, Bishop of Leuca, A. R. Torices, Antonio M. Fálquez, J. M. Alandete, Juan H. de León, Manuel A. Salgado.* Deputy for Casanare: *J. M. Moreno.* Deputies for Mariquita: *Manuel A. Camacho, Domingo Camacho, L. F. de Rieux, Benito del Palacio.* Deputies for Mompox: *Manuel Cañarete, Francisco M. Troncoso, José de Quintana Navarro.* Deputies for Neiva: *Domingo C. Cuenca, José María Céspedes, Joaquín Borrero.* Deputies for Pamplona: *Francisco Soto, Juan N. Toscano, José Ignacio Ordóñez Salgar, Manuel García Herreros.* Deputies for Panamá: *Domingo J. Arroyo, Manuel J. Pardo, J. Vallarino.* Deputy for Riohacha: *Nicolás P. Prieto.* Deputy for Santamarta: *Miguel García de Munive.* Deputies for Socorro: *Juan de la Cruz Gómez, José Vargas, Angel María Flórez, Inocencio de Vargas, Miguel S. Uribe, Ignacio Vanegas, Juan J. Molina, Miguel Silva, Joaquín Plata.* Deputies for Tunja: *Juan N. Azuero, José Ignacio de Márquez, Salvador Camacho, Mariano Acero, Judas T. Landínez, Eleuterio Rojas, José Scarpett, José María Niño, José Joaquín Franco, Isidro Chaves, José María Acero, Joaquín Larrarte, Ignacio Domingo A. Riaño.*

Secretary of the Convention: *Florentino González.*

CONSTITUTION
OF THE
REPUBLIC OF NEW GRANADA
(Constitution of 1843)

Constitution of 1843

HISTORICAL BACKGROUND

THE CONSTITUTION of 1832 continued in operation until April 20, 1843. It came to an end because several years of very bloody civil war convinced the centralists that concessions to federalism could result only in public disturbance. The civil war was proof to them that the only way to insure peace and stability was to increase the power of the President and reduce the provincial government to its former position of complete subordination to the central authorities. To this end the Constitution of 1843 was adopted.

The convention which drew up the Constitution of 1832 also selected the President and Vice-President who remained in office until regular elections could be held. For these interim terms Francisco de Paula Santander and José Ignacio de Márquez were elected. Dr. Márquez, the Vice-President, took charge of the government because General Santander was absent from the country at the time of his election.

The first problem of the new government was to settle the question of the boundary between New Granada and the newly created Republic of Ecuador. The latter republic claimed territory which had never been a part of the old Presidency of Quito but which had definitely been a part of the former Viceroyalty of New Granada. The problem was further complicated by the fact that many people in the disputed area seemed to prefer Ecuadorian to New Granadine government. This area had always been a hotbed of opposition to the central government in Bogotá. After a display of force the Ecuadorian government relinquished its unfounded claim; and the Provinces of Popayán, Chocó, Pasto, and Buenaventura were reincorporated into New Granada.

Santander returned to the capital and took over his duties October 7, 1832. Shortly thereafter the regular elections were held, and he was elected as the first President under the Constitution of 1832 and was inaugurated on April 1, 1833. The Vice-President was Joaquín Mosquera. Being the first Vice-President chosen under the constitution, he was elected for only two years in order to obtain the staggering of terms provided for in the constitution. (See Const. of 1832, Art. 97 and paragraph (f) of the "Transitory Provisions.")

From the very beginning President Santander was faced with serious opposition to his administration. The plots to overthrow the government, especially the one headed by General José Sardá, were put down by very strong measures. Many people were especially disturbed when Congress in 1833 passed a law on conspiracy which was truly Draconian. It imposed the death penalty for political crimes and established a trial procedure which was virtually summary. Santander showed no hesitancy in using the power granted by this legislation. The country, however, did enter upon a period of prosperity and progress under his administration.

Santander's term completed, Márquez was elected to the presidency. He took the oath of office on April 1, 1837. Peace and prosperity continued under Márquez, but this fortunate era was fast coming to an end. In 1839 the old Bolívar faction of the conservative party started an agitation to amend the Constitution of 1832. This faction was extremely centralist in its ideas of government and naturally was dissatisfied with the constitution. Certain newspapers joined with them in their demands for amendment.

At the same time that the government was under the attack of the extreme centralists, an act of Congress in 1839 furnished the federalists with an excuse to rush to the attack. The act provided for the suppression of the convents of San Francisco, La Merced, Santo Domingo, and San Agustín in the Province of Pasto. Since these convents were virtually deserted, the Bishop of Popayán, as well as the representatives of Pasto in Congress, recommended that they be discontinued and that their property and income be set aside for promotion of missions in Mocoa and for the support of education in Pasto. Congress acted on this recommendation.

When an attempt was made to enforce the law, the people of Pasto, never enamoured of the government in Bogotá, took this opportunity to rebel. The government denounced the people, as did the Archbishop of Bogotá in a pastoral letter to all the parishes in Pasto. The temporary restoration of order that was achieved proved nothing more than a short truce. In July, 1840, General José María Obando called on all in Pasto to take up arms. He styled himself the "Supreme Director of the War in Pasto, General-in-Chief of the Army, and Protector of the Religion of the Crucified."¹ He promised to restore to Pasto its liberty under a federal system. In short, a religious controversy was perverted and exaggerated to furnish the federalists of Pasto an excuse for open rebellion. These events in the south prompted

¹ Henao and Arrubla, *op. cit.*, p. 445.

other localities to action, and uprisings occurred almost all over the country. The government suppressed all rebellion, but it took several years of bloody fighting to restore order. One of the most active and successful commanders in the restoration of order was General Pedro Alcántara Herrán. On May 2, 1841, he was inaugurated President of the Republic.

Alcántara and his party were convinced that the civil war was a natural result of the Constitution of 1832. They argued that the time had come to have done with trying to placate the federalists. They believed that the strengthening of the President's power was indispensable to the maintenance of public peace and to the promotion of national prosperity. The memory of the civil war gave weight to their argument. Acting under the authority granted in Title XII of the Constitution of 1832, Congress drew up a new constitution, which was adopted on April 20, 1843. The Constitution of 1843 was designed to reduce the importance of the Provinces in the governmental organization and to augment the power of the Executive.

POLITICAL ORGANIZATION

It might be argued that General Alcántara's contention was ill-founded, that the civil war would have been fought regardless of the nature of the government set up by the Constitution of 1832. This much, however, can be said. The governmental organization of 1832 was such that it could be used by the rebels to their advantage. A reading of the history of the period shows that this is what they did. Some of the most effective rebel leaders and organizers were the Governors of the Provinces, who, it must be remembered, were not freely removable by the President. The prestige of their office gave them great local influence. In the second place, one must not lose sight of the fact that the Provincial Houses had been in existence for eight or nine years when the various localities rebelled. They had become an integral part of provincial political life. Their very existence furnished the rebel leaders with an agency of local government for the prosecution of the civil war. In other words, a rebel group did not have to create a local government out of nothing. Here was an established and organized institution ready for their use. To this extent at least, the revolt was aided by the Constitution of 1832; to this extent at least, Alcántara's argument was valid.

The Constitution of 1843 gave the President great control over the Governors. It provided that their "appointment *and removal* shall be *freely* made by the Executive" (Art. 131; italics inserted). In

making his appointments, the President was not bound by any nominations. Nor was he required to obtain the consent of any agency in removing Governors unsatisfactory to him.

The importance of the Provincial Houses was greatly reduced by giving Congress practically complete control of their functions and activities. Congress prescribed the qualifications requisite for election as Deputy as well as the term of office (Art. 138). The Constitution of 1843 did not grant any specific powers or functions to these Houses. In other words, Article 160 of the Constitution of 1832 was completely eliminated. After stating that there were to be Governors and Provincial Houses, the Constitution of 1843 gave Congress power "to regulate whatever else is required for the government of the Provinces, Cantons, and Parishes" (Art. 139). Finally, the Provincial Houses no longer participated in any manner whatsoever in the selection of any government officials.

The term of office for Electors was increased from two to four years in the Constitution of 1843 (Art. 26). Experience under the Constitution of 1832 showed that the shorter term made it possible for opposition parties to exert more influence than was desirable in the eyes of the framers of the Constitution of 1843. A four-year term for Electors gave a President greater assurance that his party would be in control of the House of Representatives and of the Provincial Houses during his entire tenure. If in any given election year the majority of Electors were of the conservative party, for example, they would choose a President, Vice-President, Senators, Representatives, and Deputies from the conservative party. Under these circumstances the Senate would have a conservative majority during the President's entire tenure because the terms of both were four years.

Representatives and Deputies had only a two-year term. When the Electors had only a two-year term also, the liberal party could elect a majority of the Electors, who in turn would select liberal party Representatives and Deputies for office during the second half of the conservative President's tenure. Hence it was possible for a conservative President and Senate to have to deal with a liberal House of Representatives and some liberal Provincial Houses. By giving the Electors a four-year term, the possibility of this was greatly reduced. In other words, the very same group of conservative Electors who elected the President and Senate were still in office when the time came to select Representatives and Deputies again. Even though the country had gone over to the liberal party, the voters had no opportunity to elect

liberal Electors until the conservative President's term had expired.² No one in the United States having knowledge of President Woodrow Wilson's experience can have any doubt that this Colombian arrangement was a great source of power to the President.

In the Constitution of 1843 a significant modification was made in the process for electing the President. Formerly, if no candidate obtained a majority of the electoral votes, the President was selected by Congress. A two-thirds majority in Congress was necessary. In 1843 this was reduced to a simple majority (Art. 90). This insured a given party of more complete control of the executive and legislative branches in that it reduced the likelihood of having to resort to bargains and promises always necessary for winning support for a "compromise candidate."

The President's participation in the legislative process was increased. In addition to the former right to participate in congressional debates, the President's Secretaries of State were given the "right to present to Congress bills and other legislative measures which they consider expedient . . ." (Art. 115).

Very few important changes were made by the Constitution of 1843 in the organization of the national government itself. A new office was created, that of Presidential Alternate (*Designado*). This official was selected by Congress. He was to take charge of the executive branch when both the President and Vice-President were unable to do so. Justices of the Supreme Court were selected by Congress (Art. 122). Judges of the intermediate courts were selected by the President from ternaries submitted by the Supreme Court (Art. 125).

The most important characteristic of the Constitution of 1843 was the reduction of provincial government to a position of complete subordination to the President and Congress. By this constitution the conservative elements sought to protect themselves and the country against the federalists, on whom they placed all the guilt for the civil war. So intent were they upon extirpating federalism that their zeal prompted them to include in the Constitution of 1843 the utterly unenforceable provision that "Senators and Representatives represent the Nation and not the Provinces in which they are chosen" (Art. 62).

A translation of the *Constitution of the Republic of New Granada*, herein referred to as the Constitution of 1843, follows.

² The fact that both the Senate and House of Representatives were renewed by halves does not alter the situation. Had the renewal been by a smaller fraction, the "carry-over" might have been enough to defeat the achievement of the ends sought.

CONSTITUTION
OF THE
REPUBLIC OF NEW GRANADA

In the Name of God the Father, Son, and Holy Ghost
The Senate and House of Representatives of New Granada, in Congress
Assembled:

Experience having shown that several of the provisions of the Constitution adopted by the Granadine Convention of 1832 present serious inconveniences when reduced to practice, and also that with respect to others doubts have arisen as to the terms in which they are expressed and set forth, it has become indispensably necessary to amend some and to add or repeal others, and

Considering

That to do this by means of several additional acts would increase the doubts and confusion; and that consequently it would be better to amend the same throughout by deleting such portions as are to be abolished or changed and by retaining such as are to remain in force;

By virtue of the power granted the Senate and House of Representatives by Title XII of the above-mentioned Constitution, there is made the following amendment of the

CONSTITUTION OF THE REPUBLIC OF
NEW GRANADA

TITLE I

THE REPUBLIC OF NEW GRANADA

SECTION I

THE GRANADINE NATION

Article 1: The Republic of New Granada is composed of all Granadines united in one national body under a compact of political association for their common benefit.

Article 2: New Granada shall be forever essentially and irrevocably a sovereign nation, free and independent of all foreign power or domination; and it is not, and never shall be, the patrimony of any family or individual.

SECTION 2

GRANADINES

Article 3: Granadines are such either by birth or naturalization.

Article 4: The following are Granadines by birth:

- (1) All free persons born in the territory of New Granada before the place of their birth was declared independent of Spain;
- (2) Other persons born in the territory of New Granada of parents who are Granadines by birth or naturalization;
- (3) Those born abroad of Granadine parents absent in the service of New Granada, or absent because of their devotion to the cause of the independence and liberty of New Granada.

Article 5: The following are Granadines by naturalization:

- (1) All free persons who, although born outside the territory of New Granada, were domiciled therein at the time the place of their residence was declared independent of Spain, and who afterwards submitted to the Colombian Constitution of 1821;
- (2) All persons born free in the territory of New Granada of alien parents who are not present in New Granada in the service of another country or government;
- (3) All free alien women who have married or shall marry Granadines;
- (4) Children of slaves born free by virtue of law in the territory of New Granada;
- (5) All emancipated slaves born in the territory of New Granada;
- (6) Those who obtain letters of naturalization in accordance with law.

SECTION 3

DUTIES OF GRANADINES

Article 6: It shall be the duty of Granadines:

- (1) To live in submission to the Constitution and laws, and to obey and respect the authorities established by them;
- (2) To contribute to the public expenses;
- (3) To serve and defend the country, even at the sacrifice of life if necessary;
- (4) To guard the preservation of public liberties.

SECTION 4

THE TERRITORY OF NEW GRANADA

Article 7: The limits of the territory of the Republic are the same as those which in 1810 separated the territory of the Viceroyalty of New Granada from the Captaincies-General of Venezuela and Gua-

temala, from the Portuguese possessions in Brazil, and those established by the treaty approved by the Congress of New Granada May 30, 1833, relative to the Ecuadorian boundary. These limits may be changed only by means of public treaties approved and ratified according to Article 67, paragraph 7, and Article 102, paragraph 2, of this Constitution, the ratifications having been duly exchanged.

Article 8: The territory of New Granada shall be divided into Provinces, each Province shall be composed of one or more Cantons, and each Canton shall be divided into Parishes. The law shall prescribe the division of the territory into Provinces, and these into Cantons, and it shall determine the authority to be entrusted with the duty of dividing the Cantons into Parishes.

TITLE II

CITIZENS

Article 9: Male Granadines (*varones*) must meet the following qualifications to be citizens:

- (1) To be twenty-one years of age;
- (2) To be the owner of real property of an unencumbered value of 300 pesos situated in New Granada, or have an annual income of 150 pesos, and to pay the direct taxes prescribed by law on such property or income;
- (3) To be able to read and write; this qualification shall apply, however, only to those who reach their twenty-first year by or after January 1, 1850.

Article 10: Citizenship shall be suspended:

- (1) For those accused of criminal offenses meriting corporal or infamous penalty;
- (2) For nonpayment of sums due the National Treasury, or any of the other public funds;
- (3) For mental derangement;
- (4) By judicial decree to that effect.

Article 11: Citizenship is forfeited:

- (1) For having been condemned to a corporal or infamous punishment, until restored to citizenship;
- (2) For selling one's vote or buying that of another in any election prescribed by this Constitution or by law;
- (3) For obtaining letters of naturalization in a foreign country.

TITLE III

THE GOVERNMENT OF NEW GRANADA

Article 12: The Government of New Granada is republican, popular, representative, elective, and responsible.

Article 13: For administrative purposes the supreme power shall be divided among the legislative, executive, and judicial branches; and none of these may exercise the powers granted by this Constitution to either of the other two, each branch being restricted to its own function.

Article 14: It is the duty of the Government to protect the liberty, security, property, and equality of Granadines.

Article 15: It is also the duty of the Government to protect Granadines in the enjoyment of the exercise of the Apostolic Roman Catholic religion.

TITLE IV

THE RELIGION OF THE REPUBLIC

Article 16: The Apostolic Roman Catholic religion is the only cult supported and maintained by the Republic.

TITLE V

ELECTIONS

SECTION I

THE ELECTION OF ELECTORS

Article 17: Every four years, in the year in which Canton Electors hold ordinary elections for the President of the Republic, Senators, and Representatives, there shall be chosen in each Parish one Canton Elector for each one thousand inhabitants; Parishes having less than one thousand inhabitants shall nevertheless choose one Elector.

Article 18: The election of the Electors to which the Parish is entitled shall be by a plurality of votes cast by the duly qualified voters in the Parish; each voter shall vote for a number of individuals which is twice that of the number of Electors to which the Parish is entitled.

Article 19: Parochial voters are those inhabitants of the Parish who are in full exercise of the rights of citizenship.

Article 20: In each Parish the votes of the parochial voters shall be inscribed in a register by the authority and in the manner prescribed by law.

Article 21: Officials charged with holding elections shall do so at

the times prescribed by law without awaiting orders; such officials shall give the voters eight days' notice of the elections to be held.

Article 22: The time and manner in which elections shall be held shall be determined by law; the law shall also determine the authority for canvassing the votes as well as the regulations for voting.

SECTION 2

CANTON ELECTORS

Article 23: To be an Elector, it is required:

(1) To be a Granadine in the full exercise of the rights of citizenship;

(2) To be twenty-five years of age;

(3) To be able to read and write;

(4) To be a resident of one of the Parishes of the Canton.

Article 24: The President and Vice-President of the Republic, Secretaries of State, and Governors of Provinces may not be Electors.

Article 25: When a person is chosen Elector by two or more Parishes, he shall accept the one in which he has received the greatest number of votes.

Article 26: The term of office for Electors shall be four years; any vacancies or temporary absences which occur shall be filled by those having the next highest number of votes in the respective Parish.

SECTION 3

CANTON ELECTIONS

Article 27: Electors chosen in the Parishes of each Canton shall comprise the Electoral Assemblies of the Cantons.

Article 28: The functions of Electoral Assemblies are:

(1) In them each Elector shall cast his vote in elections for President or Vice-President of the Republic, and for those Senators and Representatives, both principals and alternates (*suplentes*), who are to be chosen in the Province;

(2) To elect Deputies to the Provincial House, both principals and alternates (*suplentes*), and to make whatever other elections are prescribed by law.

Article 29: When the time set by law for the meeting of the Assemblies shall have arrived and all the Canton Electors are not present, the competent authority may compel their attendance; but when the time for voting for the President or Vice-President of the Republic, Senators, and Representatives shall arrive, the voting shall take place by those Electors attending, regardless of what number they may be.

Article 30: The law shall fix the quorum required in these Assemblies for the election of Deputies to the Provincial House and for the other elections assigned by law, as well as the majority of votes by which such election is to be effected.

Article 31: The voting in the elections of President and Vice-President of the Republic shall be executed by each Elector's submitting a slip of paper on which is written the name of the individual for whom he votes.

Article 32: The voting for Senators and their alternates shall be effected by each Elector's submitting a slip of paper on which are written, without making any distinction between principals and alternates, the names of a number of persons double that of the Senators to be elected in the Province. The voting for Representatives shall be effected in the same manner for both principals and alternates.

Article 33: The registers of votes for the President or Vice-President of the Republic shall be forwarded to the Senate, and those for Senators and Representatives to the authority designated by law.

Article 34: The law shall determine the time when and the period within which the Canton Assemblies are to hold elections or to proceed with whatever concerns them, as well as whatever else is required for their due regulation.

SECTION 4

PROVISIONS COMMON TO BOTH ELECTIONS

Article 35: Elections shall be public, and no one bearing arms may attend them.

Article 36: Any act done in parochial elections or in the Electoral Assemblies which is not prescribed by this Constitution or by law, or done after the expiration of the period therein specified, is not only null but contrary to public security.

SECTION 5

CANVASSING ELECTIONS OF SENATORS AND REPRESENTATIVES

Article 37: The law shall determine the authority by whom and the manner in which the canvassing and regulation of elections made by Canton Electors for Senators and Representatives shall be done; and how cases of tie votes shall be decided when they occur.

Article 38: The authority in charge of canvassing the votes cast for Senators and Representatives shall declare elected, from among those who are leading in the balloting, that number of persons equal to the number of Senators and Representatives to which the Prov-

ince is entitled. An equal number of persons, drawn from those who immediately follow in the balloting, shall be declared alternates.

TITLE VI

THE LEGISLATIVE POWER

SECTION 1

CONGRESS

Article 39: Congress, composed of two Houses, one of Senators and one of Representatives, shall exercise the legislative power.

Article 40: Congress shall assemble annually on the first of March even when it has not been convoked, and its ordinary sessions shall last sixty days and may be prolonged to ninety days in case of necessity.

Article 41: It shall also assemble in extraordinary session when convoked by the Executive, but when so assembled it shall consider only those matters submitted to it by the Executive.

Article 42: Congress shall meet in joint session to canvass the votes and if necessary to complete the election of President and Vice-President of the Republic; to receive from them the oath of office required by the Constitution; to choose the person who is to act as their substitute in accordance with Article 99; to select the Justices of the Supreme Court; to hear and decide upon the resignations and dismissals of the aforementioned officials; and for other matters prescribed by law; but never shall they so meet in order to exercise the functions provided for in Article 67 of this Constitution.

SECTION 2

SENATE

Article 43: The Senate shall be composed of Senators chosen in the Provinces on the basis of one Senator for each seventy thousand persons; but in each Province the population of which is less than seventy thousand one Senator shall nevertheless be chosen.

Article 44: To be a Senator, it is required:

(1) To be a Granadine by birth and in the full exercise of the rights of citizenship;

(2) To be thirty-five years of age;

(3) To be a resident or native of the Province in which the election takes place;

(4) To be the owner of real property having an unencumbered value of four thousand pesos, or in default of this an annual income of five hundred pesos accruing from landed property, or an income of

eight hundred pesos accruing from some employment or from the exercise of a trade or profession.

Article 45: Granadines naturalized in accordance with Article 5, paragraph 1, may be Senators if, in addition to being in full exercise of the rights of citizenship, they meet the requirements of age, residence, and property or income prescribed in the preceding article, and have resided eight years in the territory of the Republic after submitting to the Constitution of 1821, reckoning as part of the said eight years the time they may have been absent in the service of the Republic or because of their devotion to the independence and liberty of New Granada.

Article 46: The term of office for Senators shall be four years, one half being elected every two years.

SECTION 3

HOUSE OF REPRESENTATIVES

Article 47: The House of Representatives shall be composed of the Representatives chosen in each Province on the basis of one Representative for each thirty thousand persons; but in each Province the population of which does not amount to thirty thousand, one Representative shall nevertheless be chosen.

Article 48: In order to be a Representative, one must be a Granadine; and as for those born in New Granada, it is sufficient that they meet the following qualifications:

- (1) To be in the full exercise of the rights of citizenship;
- (2) To be twenty-five years of age;
- (3) To be a resident or native of the Province in which the election takes place;
- (4) To be the owner of landed property of an unencumbered value of two thousand pesos, or to have an annual income of three hundred pesos accruing from real property, or in default of this, an annual income of four hundred pesos accruing from some employment or from the exercise of some trade or profession.

Article 49: Granadines naturalized in accordance with Article 5, paragraph 1, may be Representatives provided that in addition to the qualifications prescribed in the preceding article, they have resided eight years in the territory of the Republic after submitting to the Constitution of 1821, reckoning as part of the said eight years the time they may have been absent in the service of the Republic or because of their devotion to the independence and liberty of New Granada.

Article 50: In the case of other naturalized Granadines, in addi-

tion to the first, second, and third qualifications required in Article 48, to be Representative it is further required:

- (1) To be married to a native Granadine;
- (2) To have real property situated in New Granada of an unencumbered value of ten thousand pesos;
- (3) To have resided eight years in the territory of the Republic after naturalization, reckoning as part of the said eight years the time that they may have been absent in the service of the Republic or because of their devotion to the independence and liberty of New Granada.

Article 51: The term of office of Representatives shall be two years, one half being elected every year.

SECTION 4

PROVISIONS COMMON TO BOTH HOUSES

Article 52: Both Houses shall be installed and open their sessions separately from each other upon the day appointed for that purpose; but neither shall do this or exercise any of its functions without the attendance of an absolute majority of all members to be chosen in all the Provinces of the Republic in accordance with the provisions of Articles 43 and 47; nor can either of the Houses be installed or open its sessions on a day different from that on which the other does, or continue its sessions while the other is in recess.

Article 53: When upon the day appointed for the opening of the session the same cannot be effected, or if opened, the session of either of the Houses cannot be continued for lack of the majority required in the preceding article, the assembled members of the respective Houses, whatever may be their number, shall compel the presence of those absent by penalties established by law; they shall open or continue the session as soon as the said majority shall be obtained.

Article 54: The Presidents of the Houses shall take the constitutional oath in the presence of their respective Houses; and the other members of each House shall take their oaths in the presence of the President of their respective House.

Article 55: Both Houses shall hold their sessions in the same town; for the purpose either of transferring their sessions to another place or of suspending them for more than two consecutive days, the mutual consent of the Houses is necessary.

Article 56: The sessions of both Houses shall be public except when either has reasons for dealing with its business in secret.

Article 57: Each of the Houses has the right to establish the necessary regulations for the direction and ordering of its proceedings as

well as for whatever else concerns its internal government and procedure.

Article 58: Agreeably to the said regulations, the Houses can punish their respective members when they infringe the same by the infliction of such penalties as they shall provide for that purpose.

Article 59: The Houses may also expel members when they have been greatly lacking in due respect for the House; in this case, however, it is necessary that the decision shall be made by a two-thirds vote of the members present and that forty-eight hours shall have elapsed between the offense and the decision, during which interval the offenders may be forbidden to take their seats in the House.

Article 60: Each House is competent to decide controversies arising out of the election of its members and to decide upon the resignations of members; but those who, because of legal impediment, cannot be present at the sessions of Congress, must submit their excuses to the authority named by law.

Article 61: Vacancies occurring in the Houses shall be filled by the respective alternates; if, due to lack of alternates such vacancies cannot be filled, new alternates shall be chosen, but their terms of office shall last only until the next session of the Houses.

Article 62: Senators and Representatives represent the nation and not the Province in which they are chosen; they shall not receive orders or instructions either from the Assemblies which elected them or from any other authority whatsoever.

Article 63: Senators and Representatives are not responsible at any time or to any authority whatsoever for the opinions they may express or the votes they may cast in the Houses or in the Congress.

Article 64: Senators and Representatives shall not be liable to arrest in any civil action while the sessions last and during the time necessary for proceeding thereto and for returning home, which time shall be fixed by law in proportion to the distances. Nor shall they be imprisoned for any criminal offense without having been previously suspended by their House and placed at the disposition of the competent Judge or Tribunal unless they shall be taken *in flagrante delicto* for an offense meriting a corporal or infamous punishment, or, unless prior to the said time [of immunity], a sentence of imprisonment has been passed upon them.

Article 65: The offices of President and Vice-President of the Republic, Secretary of State, Justice of the Supreme Court, or Judge of the District Court are incompatible with those of Senator or Representative. No person exercising any one of the above-mentioned offices

may be elected to the latter offices; and if, being a Senator or Representative, he should proceed to exercise the functions of any such offices, his seat in the respective House shall become vacant.

Article 66: Persons who at the time of any election in a Province are in the exercise of any authority, command, or jurisdiction which extends to the entire territory of such Province may not be elected Senators or Representatives for that Province.

SECTION 5

POWERS OF CONGRESS

Article 67: The following are exclusive powers of Congress:

(1) To fix at each ordinary session of Congress the sums of money which may be taken from the National Treasury to defray ordinary expenses of the next fiscal year, and in the same sessions or in extraordinary sessions to vote the sums for such extraordinary expenses as may be necessary;

(2) To establish the national taxes and contributions;

(3) To decree the alienation of national property and its application to public uses;

(4) To authorize loans or other contracts for supplying the deficit should there be one in the National Treasury, making the nation liable for the payment thereof, and to permit the national property and revenues to be mortgaged as security for the payment of said loans or contracts;

(5) To examine at each ordinary session the accounts of the preceding fiscal year which are presented to it by the Executive; said accounts shall exhibit the amount of revenues and the proceeds of the national property as well as the expenses;

(6) To fix at each ordinary session the maximum number of land and sea forces to be maintained by the Executive in time of peace, and in the same sessions or in extraordinary sessions to fix the number by which said forces may be increased when the Republic is threatened by war with another country or by armed insurrection;

(7) To approve public treaties and conventions entered into by the Executive with other Governments and Nations in order that they may be ratified and the ratifications exchanged;

(8) To permit the transit of foreign troops through the territory of the Republic, or to permit warships of another nation to remain in the ports of New Granada for more than two months;

(9) To authorize the Executive to declare war upon another nation and to instruct him to make peace;

(10) To grant personal and honorary rewards to whose who have rendered great and important services to the Republic, and to decree public honors to their memory;

(11) To grant amnesties or general pardons for grave reasons of public convenience;

(12) To determine the weight, type, form, and denomination of money, and to establish the legal weights and measures;

(13) To grant for a limited period exclusive privileges or such advantages and indemnifications as shall be considered expedient for promoting the development and improvement of enterprises or public works which may prove beneficial to the nation, for favoring the establishment of arts or trades not known in New Granada, or for encouraging such as are already there known;

(14) To create Tribunals and Courts and other functionaries necessary for the national service, and to set forth their powers and their terms of office;

(15) To enact laws and other legislative measures necessary in all matters requiring legislation or other legislative acts, and to interpret, amend, or annul all legislation which may now be in force.

Article 68: Congress cannot delegate to one or more of its members, or to any other person, corporation, or authority any of the powers mentioned in the preceding article or any of the functions with which it is invested by this Constitution.

SECTION 6

CONCERNING THE ENACTMENT OF LAWS

Article 69: Laws and other legislative acts may originate in either of the two Houses of Congress by introduction by their respective members or by the Secretaries of State.

Article 70: No bill or other legislative act may be approved by the House of origin without having been debated three times on separate days.

Article 71: Bills approved by the House of origin pass to the other House with a notification of the days on which they were debated; and the second House may not approve the same until after the formalities prescribed in the preceding article have been observed.

Article 72: The Houses have the reciprocal right to propose alterations and amendments deemed necessary until there is agreement as to the terms in which the bill shall be presented to the Executive for his sanction.

Article 73: Although passed by both Houses, no bill or other legis-

lative act shall have the force of law without the sanction of the Executive. If the latter agrees, he shall order its publication and execution as law; if the Executive finds the bill unacceptable, he shall return it to the House of origin with his objections.

Article 74: 'The Executive may object to any bill or other legislative act because it is deemed altogether inexpedient or because it is believed that alterations are necessary, the Executive proposing in this case such alterations as may be thought desirable.

Article 75: When a bill is returned to the House of origin by the Executive because it is deemed entirely inexpedient, the House shall consider his objections; and if it declares them to be well-founded, the bill shall be killed; but if the House declares the objections ill-founded the bill shall pass to the other House. The second House shall take into consideration the Executive's objections and return the bill to the House of origin with its decision on the validity of the Executive's objections. If the decision is that the objections are well-founded, the bill shall be killed; but if the objections are declared unfounded, the progress of the bill shall remain suspended until the next session of Congress.

Article 76: If the objections of the Executive consist in proposing certain changes in the bill and the House of origin should declare them uncalled for, it shall send the bill and the objections to the other House; and if the second House considers them unnecessary, the progress of the bill shall be suspended until the next session of Congress makes some decision concerning it. But if the House of origin declares all the objections to be valid and accedes to the proposed alterations, it shall send the bill together with the objections to the other House; should the latter House also agree that the objections are well-founded and also consent to all the proposed changes, the bill shall be returned to the Executive for his sanction, which cannot, in this case, be refused.

Article 77: Should the House accede to some of the changes proposed by the Executive and not to others, the bill shall again be sent to the Executive, who may sanction or object thereto just as though it were a new bill. But if the two Houses do not agree in declaring all the objections to be invalid, or do not agree in assenting to the same alterations, the bill is killed.

Article 78: Bills which in accordance with the provisions of Articles 75 and 76 have been suspended because the objections offered by the Executive have been declared to be ill-founded shall be published, together with the objections, for the information of the Nation.

Article 79: The Houses in their next session shall reconsider the

objections made by the Executive to bills referred to in the preceding article; if both Houses again declare them unfounded by a two-thirds vote of their respective members, the bill shall be sent to the Executive for his sanction, which, in this case, cannot be refused.

Article 80: The provisions of the preceding articles do not prevent a bill already killed, or one whose progress has been suspended because of Executive objections as already discussed, from being reconsidered by the Houses at any time in order to be once more presented together with the changes considered necessary to be made in it for the sanction of the Executive; but in this case it shall be subject to the formalities established for the approval of every new bill, and as such, to the sanction or objections of the Executive.

Article 81: Bills or other legislative acts which are sent to the Executive for his sanction shall be in duplicate, both copies being signed by the Presidents and Secretaries of the two Houses, and upon their being so sent, the days on which they have been debated conformably to Articles 70 and 71 shall be reported.

Article 82: Should the Executive discover that a bill does not conform to the provisions of Articles 70 and 71, he shall within two days after receipt thereof return both copies to the House of origin in order that the error may be corrected in the House in which it was committed; the bill then continues upon its constitutional course. Such as are free from any error must be sanctioned or objected to by the Executive, who shall return one of the copies of the bill to the House of origin together with his decree within eight days after receipt of the same, at the expiration of which such as have not been returned shall have the force of law and must be sanctioned and ordered published and executed.

Article 83: If within the time fixed in the preceding article, the House to which the bill is to be returned has suspended its session, the days of recess shall not be counted in the time fixed; and if Congress has recessed within this period, the time fixed shall not be considered completed until the fourth day after the session shall have again been opened.

Article 84: The intervention and sanction of the Executive is necessary for all acts and resolutions of Congress except the following:

(1) Such as relate to elections to be made, or to the consideration of resignations and excuses;

(2) The agreements of the two Houses concerning the removal of their sessions to another town, the suspension of their sessions, or the prolonging of their ordinary sessions for the term of thirty days as

allowed by Article 40;

(3) The regulations agreed to by the Houses for their mutual convenience, and for the forms to be observed when the Congress meets in joint session as provided in Article 42.

Article 85: Congress shall head all laws and legislative acts with this formula: *The Senate and House of Representatives of New Granada in Congress assembled.* . . .

TITLE VII

THE EXECUTIVE POWER

SECTION I

PRESIDENT AND VICE-PRESIDENT OF THE REPUBLIC, THEIR ELECTION AND TERM OF OFFICE

Article 86: There shall be in New Granada a President of the Republic who shall be the first chief of the Nation, and a Vice-President who shall be the second chief of the Nation.

Article 87: The President and Vice-President of the Republic shall serve for four years; the President may not, within the four years next following, again exercise the same office or that of Vice-President of the Republic.

Article 88: To be President or Vice-President of the Republic, it is necessary:

(1) To be a Granadine by birth in the full exercise of the rights of citizenship;

(2) To be thirty-five years of age.

Article 89: The election of the President of the Republic shall be made by the Canton Electors by an absolute majority of votes and at the same meeting of the Electoral Assemblies in which the ordinary elections of Senators and Representatives are made.

Article 90: Congress at its ordinary session immediately following that of the Electoral Assemblies in which the voting for the President of the Republic takes place shall, in public session, proceed to canvass the votes of the Canton Electors and shall declare elected to that office the person who obtains an absolute majority of the votes cast by the Electors. In case no one shall obtain such majority, Congress shall complete the election by choosing, by an absolute majority of votes of the Senators and Representatives present, from among the three individuals who have obtained the greatest number of votes in the Electoral Assemblies the person who is to be President of the Republic, and shall declare him elected who shall obtain the said majority.

Article 91: The election of Vice-President of the Republic shall be made two years after that of the President in precisely the same manner as provided for the latter in the two preceding articles.

Article 92: The person chosen President or Vice-President of the Republic shall, after taking the constitutional oath before Congress, enter upon office the first day of April of the year in which the canvass of the votes cast by the Canton Electors for his election is made.

Article 93: If the person who has been chosen President or Vice-President of the Republic is unable to take the constitutional oath on the day appointed in the preceding article, and if the Congress has recessed in the meantime, he shall take the oath in public before the person exercising the Executive Power.

Article 94: The four years assigned as the term of office for the President and Vice-President of the Republic shall be reckoned from the day on which, according to the provision in Article 92, they are to take office; and upon completion of this period their term of office ends.

Article 95: When in consequence of death, resignation, or other cause the office of President or Vice-President of the Republic shall become vacant, an extraordinary election shall be held in those cases determined by law.

Article 96: Persons chosen at such extraordinary elections remain in office until the day on which he who is chosen in the usual manner shall enter upon the exercise of his duties.

Article 97: The salaries of the President and Vice-President of the Republic shall be determined by law; any alterations made in said salaries shall affect only persons subsequently elected and not those already elected or in office.

SECTION 2

CONCERNING THOSE CHOSEN TO EXERCISE THE EXECUTIVE POWER

Article 98: The exercise of the Executive Power belongs to the President of the Republic as first chief of the Nation.

Article 99: In cases of death, resignation, removal, suspension, or for any other temporary or permanent default of the President, the Executive Power shall be exercised by the Vice-President of the Republic; and when, for the same causes, neither the President nor the Vice-President can perform such duties, they shall be exercised by the person whom Congress shall choose by an absolute majority of votes; the term of office and the functions of such person shall be determined by law. When none of the above-mentioned three individuals is able

to exercise the Executive Power, it shall be administered by those who shall be appointed by law and in the order established thereby.

Article 100: Neither the President nor the Vice-President of the Republic may leave the territory of New Granada during his term of office or for one year thereafter.

SECTION 3

POWERS OF THE EXECUTIVE

Article 101: The following are the powers of the Executive:

(1) To preserve the internal order and peace of the Republic, repel all foreign attack or aggression, and repress any disturbance of the internal public order;

(2) To execute and cause to be executed by persons subject to his immediate orders, the Constitution and laws as regards that part of them with which the offices of such agents are concerned;

(3) To see that other public officials not immediately subordinate to him execute the same in so far as regards that part of them with which the said officials are concerned, requiring the competent authorities to enforce responsibility in cases of failure in this duty;

(4) To make disposition of the land and sea forces for the defense and security of the Republic, for the maintenance or re-establishment of order and peace therein, and for the other objects required by the public service; but neither the President of the Republic while in office nor the person in charge of the Executive Power may take command in person;

(5) To suspend or remove at will all political officials as well as persons employed in the political offices or in the administration of public revenues.

Article 102: The following are the exclusive functions of the Executive:

(1) To convoke Congress in ordinary sessions and for extraordinary sessions when that is required by some grave motive of public convenience;

(2) To direct diplomatic negotiations, enter into treaties and conventions with other governments, and, with the prior consent of Congress, to ratify the same;

(3) To declare war on another power with the prior authorization of Congress;

(4) To appoint and remove at will Secretaries of State, Ministers Plenipotentiary, Consuls, and any other diplomatic or commercial agents, and Governors of Provinces;

(5) With previous consent of the Senate, to appoint generals and chiefs of the Army and Navy from Lieutenant Colonel to the highest rank in the service;

(6) To appoint other chiefs and officers of the Army and Navy;

(7) To appoint all other officials whose appointment is not by law entrusted to some other authority;

(8) To retire generals, chiefs, and officers of the Army and Navy; and to accept or reject resignations tendered by them;

(9) To grant letters of naturalization in accordance with law;

(10) When considered expedient to do so, to grant letters of marque against any country with which this country is at war;

(11) To grant sailing licenses (*patentes de navegación*);

(12) To commute the death penalty to some less severe one provided such commutation is motivated by reasons of public convenience.

Article 103: The Executive also has the power to grant amnesties and individual or general pardons for grave reasons of public convenience.

Article 104: Upon the opening of Congress the Executive shall give a written report to both Houses on the political state of the Republic and on the general condition of the branches of administration under his charge, indicating at the same time the public measures which should be adopted. This document shall be countersigned by all the Secretaries of State, and the Houses shall never take into consideration any communication from the Executive which is not made through the medium of or signed by at least one of the said Secretaries.

SECTION 4

RESPONSIBILITY OF THOSE EXERCISING THE EXECUTIVE POWER

Article 105: He who exercises the Executive Power shall be held responsible for the following acts:

(1) When they have for their object favoring the interest or operations of a foreign nation or an enemy of New Granada against the independence or interests of the latter;

(2) When they have for their object the obstruction of the elections provided in this Constitution, or for interference with the freedom of the voters;

(3) When they have for their object preventing the legislative Houses from meeting or continuing their sessions at the times they are required to do so by this Constitution; or interfering with the liberty and independence which said Houses ought to enjoy in all their acts and deliberations;

(4) When he refuses to sanction laws or other legislative acts in those cases in which, according to this Constitution, such consent is not to be withheld;

(5) When they have for their object preventing Judges or Tribunals from trying cases within the competence of the Judicial Power or coercing the freedom with which such trials should be conducted;

(6) In all other cases in which, by any act or omission of the Executive, any express law shall be violated; provided always the violation of the law consequent upon such act shall have been made known to the Executive; otherwise, should no such representation have been made, the Secretary of State who has signed said act or has been guilty of the omission shall alone be responsible.

Article 106: The President and Vice-President of the Republic while in office, as well as he who may have the Executive Power in charge during the time he exercises the same, may not be prosecuted or sentenced for common crimes unless the Senate shall have declared as a result of an accusation brought by the House of Representatives that there are grounds for the indictment.

SECTION 5

SECRETARIES OF STATE

Article 107: For the dispatch of whatever business or affairs are entrusted to the Executive by this Constitution and laws, there shall be Ministries of State established by law.

Article 108: Each of the Ministries shall be entrusted to a Secretary of State, but the Executive may, when it is deemed advisable, assign two of them to one Secretary.

Article 109: To be a Secretary of State it is necessary to be a Granadine in the full exercise of the rights of citizenship.

Article 110: All acts of the Executive must be promulgated with the consent of at least one of the Secretaries of State, who thus renders himself responsible for the act. Moreover, no decree or act purporting to emanate from the Executive, of whatever kind or description it may be, which is not countersigned by or communicated through one of the Secretaries of State shall be considered as such or obeyed by any agent, authority, or person whatsoever.

Article 111: The provisions of the preceding article shall not apply, however, to the appointment or removal of said Secretaries, which may be done by the person in charge of the Executive Power without being countersigned by a Secretary of State.

Article 112: Secretaries of State must not only consent to the acts

issued by the Executive, but must also submit to the Executive acts which should be issued in the interests of their several Ministries. Thus they are responsible for violations of law as well as for anything done to the injury of the public welfare, whether it is in consequence of what they have authorized by their signatures, or failed to do in the management of their Ministries; nor does the circumstance of the Executive's having withheld assent relieve them from responsibility.

Article 113: The Secretaries of State, with the consent of the Executive, shall give the legislative Houses whatever information they may require concerning the business or affairs connected with their respective Ministries except such as in the opinion of the Executive may require secrecy.

Article 114: Each Secretary of State shall present to the legislative Houses during the first six days of the ordinary sessions a written report of the state of affairs in the various branches of his Ministry, suggesting what measures the Congress should take regarding them.

Article 115: The Secretaries of State have the right to present to Congress bills and other legislative measures which they consider expedient, and to take part in the debates on such measures or any others of a similar nature; but they are never to have a deliberative vote in Congress.

SECTION 6

COUNCIL OF GOVERNMENT

Article 116: The Council of Government shall be composed of the Vice-President of the Republic and the Secretaries of State.

Article 117: The person exercising the Executive Power must hear the opinion of the Council of Government, without, however, being obligated to conform thereto:

(1) As regards his giving or withholding consent to bills and other legislative acts which may be sent to him by Congress;

(2) As regards convoking Congress in extraordinary session;

(3) As regards his request to the Congress for authorization to declare war, and in declaring the same in consequence of such authorization;

(4) As regards the appointment of Ministers Plenipotentiary, Consuls, and other diplomatic and commercial agents;

(5) As regards the appointment of Governors of Provinces;

(6) As regards the appointment of Judges of the Superior District Tribunals;

(7) As regards the exercise of the power to grant amnesties and general or individual pardons;

(8) As regards the commutation of the death penalty;

(9) As regards other cases prescribed by the Constitution or law.

Article 118: He may also require the advice of the Council on all other matters respecting which such opinion may be considered necessary, reserving to himself the right to accept or reject the same.

TITLE VIII

THE JUDICIAL POWER

SECTION I

SUPREME COURT OF JUSTICE

Article 119: The Judicial Power shall be exercised by the Supreme Court of Justice, Superior District Tribunals, and the other Tribunals or Courts created by law.

Article 120: There shall be in New Granada a Supreme Court of Justice composed of such number of Justices as shall be determined by law.

Article 121: The duties of the Supreme Court are:

(1) To take cognizance of all cases affecting Ministers Plenipotentiary and diplomatic agents accredited to the Government of the Republic as is permitted by public international law or designated by law or treaty;

(2) To take cognizance of all cases of responsibility brought against the Ministers Plenipotentiary, Diplomatic Agents, and Consuls of the Republic for malfeasance in office;

(3) To take cognizance of actions brought against persons entrusted with the Executive Power, Secretaries of State, or Justices of the Supreme Court in such cases as when, after being deprived of their office by the Senate, they are to be tried for a crime to which a serious penalty is assigned in accordance with Article 149;

(4) To take cognizance of actions against the President, the Vice-President, or the person entrusted with the Executive Power for common crimes, the Senate having previously declared that there are grounds for an indictment in accordance with Article 143;

(5) To take cognizance of all other cases assigned by law.

Article 122: The Justices of the Supreme Court shall be elected by Congress by an absolute majority, and the vacancies which may occur shall be filled *ad interim* as the law directs.

SECTION 2

SUPERIOR DISTRICT TRIBUNALS

Article 123: The territory of the Republic shall be divided into

judicial districts, and in each there shall be a Superior Tribunal of Justice.

Article 124: The law shall determine the number of Judges for each, as well as the duties of such Tribunals.

Article 125: The Judges of these Tribunals shall be appointed by the Executive from a ternary submitted by the Supreme Court.

SECTION 3

PROVISIONS COMMON TO SUPREME COURT AND DISTRICT TRIBUNALS

Article 126: To be a Justice of the Supreme Court or Judge of the Superior District Tribunals, it is necessary:

(1) To be a Granadine in the full exercise of the rights of citizenship;

(2) To be thirty years of age;

(3) To meet any other qualifications prescribed by law.

Article 127: The law shall prescribe the term of office for Justices of the Supreme Court and Judges of the District Tribunals, which shall be not less than six years; but any changes which the law may make shall have effect only for those who are chosen after such changes and shall in no way apply to those chosen before the enactment of such changes.

Article 128: The Justices of the Supreme Court and Judges of the Superior District Tribunals may not accept, while in office or throughout the year following their term of office, any appointment which the Executive may freely make.

SECTION 4

OTHER TRIBUNALS AND COURTS

Article 129: The law shall create other Tribunals or Courts which may be necessary for the administration of justice, and shall determine the powers of each, the qualifications which their Judges must meet, the authority by whom they shall be chosen, and their term of office.

SECTION 5

PROVISIONS COMMON TO ALL TRIBUNALS AND COURTS

Article 130: The Judges of any Tribunals or Courts whatsoever may not be suspended from office except in consequence of an accusation legally brought against them and admitted as valid, nor may they be removed except by judicial sentence in conformity with law.

TITLE IX

GOVERNMENT OF PROVINCES, CANTONS, AND PARISHES

Article 131: In each Province there shall be a Governor whose appointment and removal shall be freely made by the Executive.

Article 132: The Governors are the immediate political agents of the Executive in their respective Provinces, and as such they are to obey his orders and cause the same to be obeyed by all their subordinates.

Article 133: The Governors are also the political chiefs of their respective Provinces, and as such they are to obey and cause to be obeyed by their subordinates the Constitution and laws in so far as the same are applicable to them; they are also to take care that the officials who are not immediately under their orders fulfil and execute the same, strictly requiring them to do so or else enforcing their responsibility through the competent authorities.

Article 134: The law shall prescribe the qualifications necessary to be Governor, the term of office, the other powers with which such officers are to be invested, and whatever else may be necessary for the government of the Provinces, Cantons, and Parishes.

TITLE X

LOCAL GOVERNMENT OF PROVINCES, CANTONS, AND PARISHES

Article 135: For the government of the Province there shall be in each a Provincial House composed of Deputies chosen in the Cantons of the Province.

Article 136: The law shall determine the number of Deputies to be chosen in each Canton; but whatever this number shall be, each Canton shall have at least one Deputy.

Article 137: In each Province at least five Deputies shall be chosen for the Provincial House; and in the Provinces in which, according to the preceding article, such number of Deputies shall not be chosen, the five shall be distributed among their Cantons in proportion to their population.

Article 138: The law shall prescribe the qualifications necessary to be a Deputy in the Provincial Houses, as well as the term of office.

Article 139: The law shall regulate whatever else is required for the government of the Provinces, Cantons, and Parishes.

TITLE XI

CONCERNING RESPONSIBILITY OF PUBLIC OFFICIALS AND

THEIR TRIALS BY THE SENATE

Article 140: All public officials are responsible to the authorities designated by the Constitution and laws for any abuse of the powers with which they are entrusted or for nonfulfilment of their official duties.

Article 141: The responsibility of persons invested with the Executive Power, the Secretaries of State, and Justices of the Supreme Court of Justice can be enforced only by means of an accusation brought against them before the Senate by the House of Representatives.

Article 142: The House of Representatives is also empowered to accuse before the Senate all other public officials for the abuse of powers entrusted to them, or for the nonfulfilment of their official duties as well as the power to require the competent authorities to enforce responsibility for the same reason.

Article 143: The House of Representatives also has the power to accuse before the Senate the President or Vice-President of the Republic or any person invested with the Executive Power, conformably to Article 106, for common crimes; the Senate, however, must have previously declared whether there are grounds for such indictment.

Article 144: The Senate shall take cognizance of all cases of responsibility affecting any public officers whatsoever against whom the House of Representatives may bring charges in accordance with Articles 141 and 142.

Article 145: When any accusation is made concerning responsibility by the House of Representatives, the Senate shall decide by a majority vote whether or not such accusation shall be admitted, and in the event the decision is to admit the same, the accused is thereby suspended from office.

Article 146: Upon admitting an accusation, the Senate can itself prosecute or entrust the prosecution to a committee chosen from among its members, reserving to itself the sentence, which must be pronounced in open session.

Article 147: The power to pronounce sentence, which in such trials belongs to the Senate, is limited to depriving the accused of office and, at most, declaring him incapable of again filling that office because of his abuse of powers or the nonfulfilment of duties.

Article 148: Sentence in such trials must be passed by a two-thirds vote of the Senators attending.

Article 149: Those found guilty by the Senate are nevertheless subject to trial and sentence by the competent Tribunal if any of the offenses for which they have been tried are defined by law as a crime incurring a severe penalty.

Article 150: In the cases mentioned in Article 143 for declaring that there exist sufficient grounds for prosecuting for common crimes the President, Vice-President, or the person entrusted with the Executive Power, it is necessary that the same shall be decided by a vote of the majority of the Senators attending; and upon declaration that the indictment is valid, the accused shall be suspended from office and placed at the disposition of the Supreme Court to undergo trial.

Article 151: The law shall determine the mode of procedure regarding these trials before the Senate and the formalities to be observed therein.

TITLE XII

SUNDRY PROVISIONS

Article 152: To obtain in New Granada any employment to which either political or judicial authority or jurisdiction is attached, it is necessary to be a Granadine in the full exercise of the rights of citizenship.

Article 153: The function of the armed forces is to defend the independence and dignity of the Republic against all external force or aggression, and to maintain internally the constitutional and legal order, acting always under the authority and direction of the Executive. The armed forces are, moreover, essentially obedient and never deliberative.

Article 154: Generals, chiefs, and officers of the Army and Navy shall be Granadines; but foreign generals, chiefs, and officers may be admitted to the armed services of the Republic with special congressional permission.

Article 155: The National Treasury shall make no expenditure which has not been appropriated by Congress, nor in any amount greater than that which has been appropriated.

Article 156: No person holding public office in New Granada shall accept any title, office, decoration, gift, or favor from any king, government, or foreign power without congressional permission.

Article 157: In New Granada there shall be no titles, denominations, or decorations of nobility or any hereditary distinctions.

Article 158: No Granadine shall be compelled to stand trial except before the competent Tribunals and Courts established by this Constitution or by law, nor may he be sentenced without being heard and found

guilty; nor can any sentence be pronounced upon him except the one assigned to the offense of which he has been convicted by a law enacted prior to the commission of said offense.

Article 159: No Granadine may be arrested, detained, or imprisoned except by the authority and in the cases prescribed by law.

Article 160: No Granadine is obliged to give evidence in any criminal case against himself, his spouse, ascendants, descendants, brothers, or sisters.

Article 161: No crime shall hereafter be punished with the penalty of confiscation, but this provision does not include the forfeitures or fines assigned by law to certain crimes.

Article 162: With the exception of the contributions and taxes established by law, no Granadine shall be deprived of any part of his property for public use without his consent unless it be required by some public necessity recognized as such by law, in which case the party shall be fully indemnified for the value thereof.

Article 163: All Granadines have the right to publish their thoughts in print without previous censorship or permission from any authority; they are, however, subject to the responsibility and penalties prescribed by law for the abuse of this right; trials for such abuses shall always be by jury.

Article 164: Every Granadine has the power to claim his rights before the proper public authorities provided it be done with the proper moderation and respect; all have the right to present in writing to Congress or the Executive whatever they may consider expedient for the public benefit, but no individual or private association may petition the authorities in the name of the people, much less arrogate to themselves the name of the *People*. Those contravening this provision shall be tried according to law.

Article 165: No Granadine's house shall be entered, nor his correspondence or papers intercepted or inspected except by the authority and in the cases and in accordance with the formalities prescribed by law.

Article 166: The entail of estates as well as every other description of entail is prohibited, nor can there exist in New Granada any inalienable landed property.

Article 167: Places which because of their isolated position and distances from other towns cannot form part of any Canton or Province, or because of their sparse population cannot be erected into a Canton or Province, shall be governed by special laws; until they are

incorporated into some Canton or Province or erected into such, the constitutional regime may be established therein.

TITLE XIII

CONCERNING THE CONSTITUTIONAL OATH

Article 168: No public officer shall enter upon his office or exercise any of the duties attached thereto without taking an oath to defend and sustain the Constitution of the Republic and to fulfil faithfully and exactly the duties of his office.

TITLE XIV

INTERPRETATION AND AMENDMENT OF THE CONSTITUTION

Article 169: Whatever doubts may occur respecting the true meaning of any of the provisions of this Constitution may be resolved by means of a special and express law.

Article 170: This Constitution or any part thereof may at any time be added to or amended by a legislative act passed in accordance with the formalities prescribed in Section 6 of Title VI; but in order that such legislative act may acquire the force of a constitutional law or become part of this Constitution, it is necessary that it be published at least six months before the day on which the Canton Electors are to hold the next ordinary election of Senators and Representatives, and that the said legislative act be newly considered in both Houses of Congress within the next legislative session and again be approved in each of them without any alteration by at least a two-thirds vote of the members of the respective Houses.

Article 171: Thus approved, the addition or amendment of the Constitution shall be sent to the Executive for his sanction, which cannot be refused in this case; and until such sanction be given, it shall have no legal value or effect whatsoever.

Article 172: The power of Congress to amend this Constitution shall never extend to the articles in Title III, which relates to the form of government.

FINAL DISPOSITIONS

Article 173: If the Congress, in accordance with the provisions of Article 216 of the Constitution of 1832, authorizes as necessary this reform of said Constitution in which is included all that is to continue in force, it shall publish and promulgate this as the Constitution of New Granada, and that which is not so included, as well as the Amend-

ment of April 16, 1841, is hereby annulled. In this event, Congress shall set the day on which the provisions of this Constitution shall enter into force.

Article 174: Those who are occupying the offices of President and Vice-President of the Republic on the day on which it is decided that this Constitution shall enter into force shall continue in office until the completion of the term for which they were elected.

Done in Bogotá on the 20th of April 1843.

President of the Senate: JOSÉ IGNACIO DE MÁRQUEZ.

President of the House of Representatives: JUAN CLÍMACO
ORDÓÑEZ.

Secretary of the Senate: *José María Saiz.*

Secretary of the House of Representatives: *Vicente Cárdenas.*

CONSTITUTION
OF
NEW GRANADA
(Constitution of 1853)

Constitution of 1853

HISTORICAL BACKGROUND

THE CENTRALIST ELEMENTS in the country were not satisfied with the Constitution of 1832 because it made the provincial governments too important. As pointed out above, these elements felt that the bloody civil war of 1839-1840 was directly attributable to that constitution. Under the leadership of President Pedro Alcántara Herrán, the conservatives or centralists drew up and adopted the Constitution of 1843, which was designed to correct the errors they saw in that of 1832.

General Alcántara had been elected in 1841 for a four-year term. He remained in office after the adoption of the Constitution of 1843 because it was provided that "those who are occupying the offices of President and Vice-President of the Republic the day on which it is decided that this Constitution shall enter into force shall continue in office until the completion of the term for which they were elected" (Art. 174). During President Alcántara's tenure (1841-1845) the country enjoyed relative stability and prosperity. The conservatives gave the country reasonably good government.

The candidates in 1845 were Eusebio Borrero and Tomás Cipriano Mosquera. General Mosquera was inaugurated April 1, 1845. The Army supported his candidacy because of its respect for this distinguished soldier. He was also supported by those civilians who wanted a strong Army man in power to control the "disorderly elements" in the country, i. e., the anticentralists. Since he was Archbishop Manuel José Mosquera's brother, General Mosquera was supposedly a supporter of the Church. The General, however, "was not of the regular conservative school, but was somewhat changeable and had liberal tendencies. . . . His temperament could not be called liberal, for it was quite the contrary; and yet he contributed effectively to the realization of great liberal measures."¹

During Mosquera's administration many progressive measures were taken, among the more important of which were promotion of steam navigation on the Magdalena River, the inauguration of work on the Panamá Railroad, the adoption of the metric system, the promotion and the overhauling of the monetary system. In spite of these progressive measures, there was, however, much in Mosquera's administra-

¹ Henao and Arrubla, *op. cit.*, p. 450.

tion which gave rise to intensely bitter factional disputes. One act in particular united the antigovernment elements and furnished them with a concrete basis for opposition.

In 1847 the government scaled downward the general system of import duties. This had an adverse effect upon the manufacture of certain articles in Colombia. The workers and employers affected by this measure banded together to form an antigovernment revolutionary society known as *Democrática*. Many persons generally dissatisfied with the government joined this organization, which spread throughout the country. To combat the *Democrática*, the progovernment elements set up a society known as *Filotémica*.

By the following year (1848) party lines were quite well drawn and consolidated. The progovernment group adopted the name "Conservative Party." It was composed of the members of the *Filotémica* society, the old bolivarians, "ministerials," and many right-wing liberals. The opposition naturally called itself the "Liberal Party." This group was composed of the liberals of the revolt of 1840 and certain radical university elements who were greatly inspired by the revolution taking place in France at that time.

The presidential election of 1849 was fought out along these lines. The conservative, or government, party was split. Some supported Dr. Rufino Cuervo, and others Dr. Joaquín José Gori. Gori and his followers bolted the party because of personal animosity for President Mosquera, the nominal head of the conservatives. The liberal elements supported General José Hilario López.

Since no candidate obtained the necessary majority, Congress had to select the President. When it became evident that the election would have to be made by Congress, the liberals held demonstrations and brought pressure to bear in favor of López, who was elected. He took the oath of office April 1, 1849. For the next few years the liberals were to be in control of the government.

During the administration of López much that the liberals had been demanding was put into effect. With regard to personal rights and privileges, slavery was abolished completely, trial by jury in criminal cases was instituted, and another act of Congress gave unlimited freedom of press. This last enactment was particularly interesting in view of the fact that Article 163 of the Constitution stated that the right to publish was "subject to the responsibility and penalties prescribed by law for the abuse of this right. . . ." In other words, if Congress could constitutionally prescribe penalties for abuse, it could also prescribe unlimited freedom of the press. The power of the con-

servative government to prescribe penalties had been a great handicap to liberal propaganda. Finally through abolition of the death penalty for political crimes, the price to be paid for unsuccessful opposition and revolt was lessened.

The reaction to centralization is evident in the act of April 20, 1850. Congress passed a law "decentralizing taxes" and thereby gave the Provinces greater control over their finances. This act listed certain of the existing taxes as being for the benefit of the national government. All taxes not included in this listing were assigned to the provincial governments. Moreover, these governments were allowed to abolish, increase, or decrease any of the taxes in the provincial category.

The liberals of that day were particularly antichurch. They insisted that the López government take measures designed to reduce the influence and importance of the Catholic Church in Colombia. Under this pressure the government expelled the Jesuits on May 21, 1850, basing the legality of its action upon the pragmatic sanction of Charles III of April 2, 1767. The Jesuits had been permitted to return to the country in 1844 by the conservative government of President Alcántara.

In that same year (1850) two other laws were enacted. By one, Congress gave the Municipal Councils (*cabildos*) the power to appoint parish priests from ternaries submitted by the bishop of the particular diocese. The other law decentralized state support of the Church. It provided that the Provincial Houses would henceforth appropriate the public monies necessary for the support of the local churches. This meant that local pressure could be brought to bear more effectively upon the clergy.

The act of May 14, 1851, abolished tithes and the ecclesiastical privileges and jurisdiction (*el fuero religioso*). In 1852, in a message to Congress, President López recommended the complete separation of the Church and State.

From what has been said, it is obvious that the liberal program got well on its way toward realization under the López administration. It is also obvious that the spirit of the López administration was definitely not in harmony with the spirit of the Constitution of 1843, under which that administration functioned. Hence, as was to be expected, the liberals called loudly and insistently for constitutional reform.

Before discussing the next presidential election it should be pointed out that the liberalism of the López regime made enemies. In the middle of 1851 civil war broke out in the Province of Pasto and spread

to the Provinces of Antioquia, Cundinamarca, Neiva, Pamplona, and Tunja. The rebels justified their opposition on the grounds that President López had been unconstitutionally elected because the Congress which selected him had been intimidated by the democratic societies. This revolt lasted for only a matter of months, and the government was able to restore order.

The religious controversy was intensified by the government's treatment of certain important Catholic clergymen. Archbishop Manuel José Mosquera protested so vehemently against the antichurch legislation that the government exiled him. The protests of the Bishops of Cartagena, Pamplona, and Santa Marta likewise resulted in the banishment of these prelates. Such actions widened the chasm between the prochurch conservatives and the liberals.

In the presidential election for 1853 the conservatives, by refusing to offer a candidate or to vote, assured a continuation of the liberals in power. One very important group in this election was that popularly known as the *gólgotas*. They were predominantly a group of student radicals who had formed an organization in September, 1850, known as the *Escuela Republicana*. Although of the liberal credo, they were the most radical element of the liberal party. They were as hostile to the *Democrática* society as they were to the conservatives. This hostility manifested itself in the election. Due in a large measure to the fact that there was no conservative opposition, there was no pressing need to co-operate.

The radicals (*gólgotas*) supported General Tomás Herrera. The moderate Liberals, also called "draconians" because they were more or less satisfied with the existing constitution and institutions, supported General José María Obando. Obando was also supported by the Army and certain disaffected moderate conservative elements who were trying to prevent the radicals from coming to power. Obando won and was inaugurated April 1, 1853, and the moderate liberals were thereby continued as the governing party. It was in May, one month after Obando's inauguration, that the Constitution of 1853 was approved.

POLITICAL ORGANIZATION

One of the notable characteristics of the Constitution of 1853 was the extent to which the liberal legislation discussed above was given constitutional expression and thereby made a part of the basic law. Slavery was abolished (Art. 6). It was provided that there be "jury trial in all cases meriting corporal punishment or loss of liberty for

more than two years" (Art. 5 [11]). Freedom of the press was "without any limitation" (Art. 5[7]). For the first time religious liberty was made a part of the fundamental law of the country. Formerly the government had been constitutionally obligated to protect and support the Catholic Church (1811, Art. 4; 1830, Arts. 6 and 7; 1832, Art. 15; 1843, Arts. 15 and 16). In the Constitution of 1853 separation of Church and State was accomplished, first, by absence of any provision relative to state support and protection of the Catholic Church, and, secondly, by guaranteeing to all "the free profession of religion, whether public or private, so long as it does not disturb the public peace . . ." (Art. 5[5]).

The long-standing liberal demand for democratization of elections was acceded to in this constitution. Property and literacy qualifications for voting were abandoned. All male citizens "who are or have been married, or who are more than twenty-one years of age" were qualified voters (Art. 3). Property and literacy qualifications for public office were likewise eliminated. "With the exception of the offices of President and Vice-President, for which it is required that the incumbents be native-born Granadines and thirty years of age, no other post of authority or of political or judicial jurisdiction in New Granada shall require any other qualification than that of being a Granadine citizen," i.e., a qualified voter (Art. 7).

A second important modification of the electoral system was the discontinuance of indirect elections by Electors. Under the provisions of the Constitution of 1853 all voting was direct and by secret ballot (Arts. 13 and 44).

The third and final modification to be considered here was in connection with the increase in the number of officials who were selected by popular election rather than by appointment. The President, Vice-President, Senators, Representatives, and Deputies to the Provincial Houses, however, continued to be elected by direct instead of indirect voting. The Constitution of 1853 increased the number of elective officials by providing that Justices of the Supreme Court, Judges of inferior tribunals, Governors, the Attorney-General, and Prosecuting Attorneys should also be directly elected by the qualified voters (Arts. 13, 42, 44, 51, 52). In the matter of elections, the Constitution of 1853 was a great liberal victory, as it was in the matter of Church and State relationship.

Inasmuch as there were no noteworthy changes in the organization of the three branches of the national government, no attempt will be made to summarize the constitutional provisions relative thereto

other than to point out the fact that the Constitution of 1853 did not give the President the authority to assume extraordinary powers. Authority to assume such powers was, in the eyes of the anticentralist liberals, a conservative device for the maintenance of strong centralization, which they had always abhorred.

The dominant liberal party saw to it that the Constitution of 1853 provided for a decentralized governmental organization. They had been driving toward this goal for years, and this was the best opportunity so far to implement their philosophy in this regard. Whether the decentralization achieved amounted to true federalism will be reserved for later discussion.

Instead of stipulating that "sovereignty resides essentially in the Nation," as had been the case in former constitutions, Article 10 of the Constitution of 1853 provided that "full powers of local government are reserved to the Provinces. . . ." The same article then listed the powers and functions of the national government. It was further provided that "each Province has the constitutional power to do *whatever it may deem necessary* for its own organization and administration so long as it does not invade those fields within the competency of the general government. . ." (Art. 48; italics inserted). There was no provision to the effect that that which is not expressly granted to the national government is reserved to the Provinces.

There was an inter-Provincial "privileges and immunities" clause to the effect that "no Province may subject the Granadines of another Province or their property to any obligations or charges to which its own inhabitants are not subjected, or deprive them of any rights or protection granted to its own inhabitants" (Art. 49).

It can be seen from what has been said so far that the national government was specifically granted certain powers, most of which are expressed in Article 10. There is no express statement in the Constitution of 1853 that the Provinces had "residuary" powers. All that was specifically said in this connection was that "each Province has the constitutional power to do whatever it may deem necessary for its own organization and administration," provided it did not infringe upon the national sphere of action (Art. 48). There are Colombian commentators who go so far as to say that the listing of national powers in Article 10, combined with the phraseology of Article 48, quoted immediately above, justifies the conclusion that all powers not expressly delegated to the national government were reserved to the Provinces.²

²See José de la Vega, *op. cit.*, p. 193; and Pombo and Guerra, *op. cit.*, II, 1015.

It is difficult to ascertain at this late date whether such a conclusion is valid. This much, however, can be said: the next constitution, that of 1858, does expressly provide that "all matters which are not delegated by this Constitution to the general government of the Confederation are reserved to the States" (Art. 8).

The territory of the republic was divided into Provinces and these into Parishes. That no particular Province had a constitutional right of existence as a Province is evidenced by the provision that Congress had the unqualified power to determine "provincial boundaries as well as their alteration and abolition" (Art. 10[5]). This provision would seem to cast grave doubt upon the validity of the conclusion that under the Constitution of 1853 the Provinces had residuary powers or rights. Certainly one of the most fundamental residuary rights of Provinces or States in any truly federal system is that of existence. If the national government has the constitutional power to abolish provincial boundaries, then it follows that it has the constitutional power to abolish Provinces. This is exactly what Congress did two years after the Constitution of 1853 was adopted. The Provinces of Panamá, Azuero, Veraguas, and Chiriquí were combined to form the State of Panamá. The formation of other States followed.³

At the head of the provincial government there was a Governor popularly elected by the voters of the Province. As formerly, he had a dual function; i.e., he was responsible for the execution of the national constitution and laws within the Province, and he performed all duties and exercised all powers assigned him by the legislative enactments of the Provincial Legislatures. The Governor's term of office was two years, and he was eligible for re-election (Art. 52). The number, nature, and functions of his subordinates were determined by the Provincial Legislature (Art. 50).

The President of the republic had the power to suspend Governors from office when he deemed it necessary, but he was required to make "a report of his reasons for such action to the Supreme Court in order that the court may fix the duration of such suspension" (Art. 53). The President also had power to bring charges against the Governor before competent judicial authority "for violation of the Constitution or national laws" (Art. 54).

In previous constitutions the subordinate bodies were called Assemblies (*Asambleas*) or Houses (*Cámaras*). It is significant that in the Constitution of 1853 they were called Provincial Legislatures (*Legislaturas provinciales*). In Colombian jurisprudence *legislatura* is not

³ Henao and Arrubla, *op. cit.*, pp. 475-476.

synonymous with *asamblea* or *cámara*. The distinction is quite similar to that made in the United States between ordinance-making and law-making. The *asamblea* and *cámara* merely have the power to issue ordinances for the administrative implementation of legislation enacted by a superior body. A *legislatura* has the power to enact laws as such, that is to say, the power to legislate.

Each Province was to determine the composition, organization, and functions of its Legislature. There were only three limitations placed upon the Provinces in this matter. The Legislature must contain no less than seven members. The members had to be popularly elected (Art. 51). And, of course, the Legislatures could not function in such a manner as to "invade those fields within the competency of the general government" (Art. 48). The acts of the Legislatures were subject to judicial review by the Supreme Court (Art. 42[6]).

There was no provincial court system as such distinct from the national court system. The establishment, organization, and jurisdiction of all courts below the Supreme Court were determined by Congress (Art. 43). The Judges of such courts were popularly elected by the voters in the particular judicial district (Art. 44).

In conclusion, some attention should be given to the question of whether or not the Constitution of 1853 set up a federal system of government.

One characteristic of a federal system is the coexistence of two spheres of government, each with a government of its own.⁴ By the same token, each government has the constitutional right to existence and to supreme government within its own sphere so long as it does not invade the other's sphere of action. Therefore any political organization which is of such a nature that the national government may constitutionally take measures which jeopardize the subordinate governments, whatever else it may be, is not a federally organized political system.

It is suggested that in order to insure the continuance of a federal government once it is organized, it is necessary that the subordinate governments, whether Provinces or States, participate effectively in the amendment procedure. One may not be justified in going so far as to insist that this is an indispensable characteristic of federal organization. A federal government in which the power of amending the constitution is completely vested in the national government is conceivable. The political mores of the people could be such that the

⁴ In the United States of America, for example, the Tenth Amendment is the constitutional expression of this legal fact.

national government would not dare to use this power to the detriment of the "federalness" of the political organization of the country. On the other hand, however, in the world's political history there is no lack of evidence of the fact that laws and legally vested powers can be used to subvert the will of the people. Hence in federal constitutions one finds as a common check upon this possibility the requirement that some agency other than the national government make the final decision as to constitutional amendments.⁵ Such procedure and requirements may not be of the essence of federalism. But this much is certain. Peoples who have desired to establish federal systems and keep them federal have usually adopted these safeguards against tinkering with the constitution. There is certainly at least one basic justification for these safeguards: they fortify and implement more effectively the essential right to existence which States or Provinces have in a federal union.

If the foregoing reasoning is valid, the Constitution of 1853 did not provide for a federally organized government. Article 57, paragraphs 1 and 3, gave the national Congress the power to propose *and adopt* constitutional amendments. In the exercise of this power as pointed out above, Congress in 1855 abolished four Provinces and combined their territory to form the State of Panamá. Hence under the Constitution of 1853 the members of the union did not have the right to existence. This alone would seem to justify the conclusion that the government was not federal. However, other justifications can be made.

It is true that Article 48 provided that "each Province has the constitutional power to do whatever it may deem necessary for its own organization and administration so long as it does not invade those fields within the competency of the general government. . . ." Just how far could the Provinces go in doing whatever was deemed necessary for their own organization and administration? In the first place, the Provinces were not protected by any constitutional provision to the effect that powers not delegated to the general government were reserved to the Provinces. To be sure, the absence of any such provision is not conclusive proof of anything. But the absence of such a provision, combined with the fact that Congress could initiate and

⁵ In some federal states amendments must be accepted by State Legislatures or State ratifying conventions; see Constitutions of United States, Art. 5, and Venezuela, Arts. 126-131. Approval by a specially elected constitutional convention is required in Argentina; see Art. 30. In Brazil the national government may propose amendments, but they must be accepted by a national plebescite; see Art. 174.

adopt amendments, would seem to be proof of the fact there were no residuary or inherent powers in the Provinces. Having the complete power of amendment, Congress could delegate itself more powers whenever the desire to do so came upon it. Under these circumstances the national powers listed in Article 10 were "subject to change without notice," so to speak. In other words, the dividing line between national and provincial spheres was completely in the hands of the national Congress. And that is not federalism.

Finally, under the Constitution of 1853 it was impossible for the Provinces to have complete governments of their own. The only branch of government which was completely provincial in nature was the Provincial Legislature. There were no provincial courts as such. Article 43 vested in Congress the power to establish courts inferior to the Supreme Court and to determine their functions. It is true that the voters of the several judicial districts elected the judges. But Congress decided whether there would be courts. If Congress established a court here or there, then the voters had an occasion to vote. If Congress decided to abolish a particular court or judicial district, then the voters of that area had no judges to elect.

The head of the executive branch of the government was not completely a provincial officer. In addition to his capacity as provincial executive, the Governor was also the agent of the President (Art. 52). Moreover, the President could suspend the popularly elected Governor "when he deems it necessary," and the Supreme Court determined "the duration of such suspension" (Art. 53). Such national control as this is inconsistent with the doctrine of federalism.

The Constitution of 1853 did decentralize power; this decentralization, however, did not amount to federalization.

A translation of the *Constitution of New Granada*, herein referred to as the Constitution of 1853, follows.

CONSTITUTION
OF
NEW GRANADA

In the Name of God, Legislator of the Universe, and by the
Authority of the People,
The Senate and House of Representatives of New Granada, in
Congress assembled
Considering:

That the Constitution adopted April 20, 1843, does not fully
satisfy the desires or necessities of the Nation;

By virtue of the power to add to and amend the same Constitu-
tion which was granted by it to the Congress, and acting in accordance
with the procedure and powers extended by the Additional Act of
March 7, 1853, decree the following

CONSTITUTION OF NEW GRANADA
TITLE I

THE REPUBLIC OF NEW GRANADA AND GRANADINES

Article 1: The former Viceroyalty of New Granada, which was
part of the former Republic of Colombia and later the Republic of
New Granada, is hereby constituted a democratic, free, sovereign Re-
public independent of all foreign powers, authorities, or domination,
and is not and never shall be the patrimony of any family or person.

Article 2: The following are Granadines:

(1) All individuals born in New Granada and the children of the
same;

(2) All persons naturalized in accordance with law.

Article 3: All Granadine inhabitants who are or have been mar-
ried, or who are more than twenty-one years of age are citizens.

Article 4: Citizenship may not be lost or suspended except as a
penalty provided by law; rehabilitation shall be obtainable.

Article 5: The Republic guarantees to all Granadines:

(1) Individual liberty which recognizes no other limits than the
liberty of another individual according to law;

(2) Personal security, which consists in the right of not being im-
prisoned, detained, arrested, or confined except for purely criminal
matters in conformity with law; this provision shall have effect with
respect to cases arising after this Constitution goes into effect and for

acts committed during that time; persons shall not be judged or sentenced by special commissions, but only by regular Judges in accordance with pre-existing laws after hearing and legal sentence;

(3) Inviolability of property, the least portion of which may not be taken except by a general levy, as a result of a legal penalty, or when needed for some public use, and in the latter case only after a prior and just indemnification has been made. During war such indemnification need not be made prior to the taking;

(4) The liberty of industry and labor within the restrictions established by law;

(5) The free profession of religion, whether public or private, so long as it does not disturb the public peace, offend good morals, or obstruct others in their worship;

(6) Inviolability of the domicile, correspondence, and private papers, which may not be interfered with except by competent authority and in accordance with the formalities prescribed by law;

(7) The free expression of thought, it being understood that when done by the press it is without any limitation, and when done by word of mouth or any other means it is limited only in those ways established by law;

(8) The right to assemble publicly or privately without arms for the purposes of petitioning officials or authorities or to discuss any matters of public or private interest, and to express freely and without responsibility opinions upon the same. But any meeting of citizens which makes its petitions or expresses its opinions upon any matters by arrogating unto itself the name or the voice of the People, or pretends to impose upon the authorities its will as the will of the People is seditious; individuals composing such a group shall be tried on the charge of sedition. The will of the People can be expressed only through the representatives of the People by mandate obtained in conformity with this Constitution;

(9) The right to give or receive any kind of instruction in institutions not supported by public funds;

(10) Equality of all individual rights; no distinctions based on birth, and no titles of nobility, profession, privilege, or class shall be recognized;

(11) Jury trial in all cases involving crimes meriting corporal punishment or loss of liberty for more than two years, but the law may except from this requirement cases of responsibility brought against public officials and trials for political offenses.

Article 6: There is and shall be no slavery in New Granada.

Article 7: With the exception of the offices of President and Vice-President, for which it is required that the incumbents be native-born Granadines and thirty years of age, no other post of authority or of political or judicial jurisdiction in New Granada shall require any other qualification than that of being a Granadine citizen.

Article 8: Aliens already in as well as those who shall come to New Granada shall enjoy the same civil rights and guarantees as are extended to Granadines, provided they live in submission to the laws and authorities of the country.

Article 9: It is the duty of all Granadines to comply with and respect the laws, obey the authorities, contribute to the public expenses, serve the country, and defend the liberty and independence of the Nation.

TITLE II

THE GOVERNMENT OF THE REPUBLIC

Article 10: The Republic of New Granada establishes for its regime and general administration a popular, representative, and responsible government. Full powers of local government are reserved to the Provinces, and the following powers and functions reside in the general government:

(1) Maintenance of the general order; the right to decide on peace and war, and consequently the power to maintain an Army and Navy and to legislate on all matters necessary for their organization and administration;

(2) The organization and administration of the National Treasury; providing the contributions and ordering the national expenses; regulating and amortizing the national debt;

(3) The control of all foreign commerce, the ports of importation and exportation, canals or navigable rivers which extend to more than one Province, and the canals and roads which may be constructed to connect the Atlantic and Pacific oceans;

(4) Enacting civil and penal legislation as well as creating rights and obligations between individuals, defining the punishable actions and providing the proper penalties, and also providing for the organization of the authorities and functionaries who are to make effective these rights and obligations and who are to impose the penalties, and a uniform procedure that is to be observed in these matters throughout the Republic;

(5) Demarcation of boundaries between the national territory and

that of foreign countries, and the determination of Provincial boundaries as well as their alteration and abolition;

(6) Foreign relations and the power to enter into treaties and conventions;

(7) The interpretation and amendment of the Constitution and the other powers expressly conferred by the Constitution;

(8) Taking a periodic census of the population;

(9) The organization of the electoral system for all elective national offices;

(10) Doing whatever is necessary for the administration, adjudication, application, and sale of the uncultivated lands and other national property;

(11) The determination of the type, weight, form, and denomination of money, and the establishment of an official system of weights and measures;

(12) The control of immigration and naturalization of aliens;

(13) Granting exclusive privileges and other aids or indemnifications in matters of recognized public utility which do not have a purely provincial character.

Article 11: The general government also has the power, although not exclusively, to foster public education.

Article 12: Congress enacts all laws concerning matters the control of which is vested in the general government and gives its approval to all public treaties. The President executes them or sees that they are executed. The Supreme Court of Justice and other Tribunals and Courts apply them in particular cases.

TITLE III

ELECTIONS

Article 13: Every Granadine citizen has the right to vote directly by secret ballot and at the proper times for: (1) the President and Vice-President of the Republic, (2) Justices of the Supreme Court of Justice and the Attorney-General of the Nation, (3) the Governor of his Province, (4) the Senator or Senators and the Representative or Representatives of his Province. The law shall determine the time and formalities of these elections.

Article 14: All elections referred to in the preceding article shall be determined by a majority of votes.

In case of a tie, the election shall be decided by lot.

Article 15: The President and Vice-President, Secretaries of State,

Justices of the Supreme Court, the Attorney-General of the Nation, and the Governors of Provinces may not be elected Senators or Representatives. The Judges and Attorneys (*Fiscales*) of the Courts established by law, and other officers who exercise jurisdiction or authority in more than one Parish may not be elected Senators or Representatives for the Provinces in which they officiate.

TITLE IV

THE LEGISLATIVE POWER

Article 16: The people delegate the legislative power of the general government to a Congress composed of two Houses: a Senate composed of one Senator for each Province provided such number exceeds twenty-one, and a House of Representatives chosen on the basis of one Representative for each forty thousand persons and an additional Representative for each remainder amounting to at least twenty thousand persons in the several Provinces, it being always understood that each Province has the right to elect one Representative even though its population does not meet the required number.

Article 17: The term of office for Senators and Representatives shall be two years; they are eligible for re-election indefinitely.

Article 18: The members of Congress are absolutely not responsible for their opinions and votes, and they enjoy immunity of person during the sessions and while they journey thereto and therefrom and to their homes. The law shall determine the method of procedure against them in criminal cases during this period.

Article 19: The Congress shall meet in its own right on February 1 of each year in the capital of the Republic with an absolute majority of the members of each House in attendance; it shall continue in session for sixty days, which session may be prolonged for thirty days more should the Congress deem it necessary; Congress also has the right to meet in extraordinary session for one or more determined purposes. In none of these actions is the intervention of the Executive necessary.

Article 20: During the term for which they are elected, members of Congress may not accept any office to which the Executive may freely appoint. They may be appointed only Secretary of State or diplomatic officer, which appointment vacates their congressional seats.

Those officials who may be freely appointed and removed by the Executive automatically vacate their offices when they accept election to the legislative body.

Article 21: It is the exclusive power of the Senate to take cognizance of all actions brought by the House of Representatives against the person exercising the Executive Power, Secretaries of State, the Attorney-General of the Nation, and the Justices of the Supreme Court of Justice for misconduct in the exercise of their duties.

Article 22: The law shall determine precisely the formalities of such trials as well as any others in which the legislative Houses may be permitted to intervene, and it shall also determine the penalties which may be imposed.

Article 23: Congress shall vote annually the national public expenses in accordance with the budget drawn up as directed by law and presented by the Executive; it shall examine and approve the budgetary and treasury accounts as presented by the Executive; it shall fix the size of the military force to be under arms the following year; it shall grant amnesties and general pardons for reasons of public convenience. Congress also has power to consent to or withhold consent to promotions in the Army from Lieutenant Colonel to General inclusive when such consent is requested by the Executive; and it has power to accept the resignations of the President and Vice-President of the Republic, the Presidential Alternate (*Designado*) when performing the executive function, the Attorney-General of the Nation, and the Justices of the Supreme Court of Justice.

The authority who is to accept the resignations of the Attorney-General of the Nation and of the Justices of the Supreme Court during the recess of Congress shall be determined by law.

Article 24: Each House is competent to hear and decide questions concerning the election of its members, to provide whatever may be necessary for the policing of the building in which it meets, and to judge and punish in accordance with its own regulations all persons who express their approval or disapproval of the speeches or opinions expressed by the Senators or Representatives.

Article 25: Each House is also competent to judge and punish those who violate the police rules enacted by each House; and each House is competent to accept the resignations of its respective members.

TITLE V

THE EXECUTIVE POWER

Article 26: The people delegate the exercise of the Executive Power to an officer known as the President of New Granada, who is chief of the national public administration.

Article 27: The President of New Granada shall remain in office four years, and he shall be elected by a direct secret vote of the citizens of the Republic; Congress shall have the power to canvass the vote and declare the election in favor of the one who obtains the majority of votes.

Article 28: To fill the temporary or permanent vacancy of the presidency there shall be a Vice-President, whose term of office shall be four years and who shall be elected in the same manner as the President.

Article 29: In case of a temporary or permanent vacancy of the vice-presidency, the Executive Power shall be exercised by a citizen who shall be annually chosen by Congress.

Article 30: When none of the three officers mentioned above is able to take charge of the Executive Power, it shall be exercised by such other persons as the law may designate and in the order established thereby.

Article 31: When the President and Vice-President are permanently incapable of functioning and the Presidential Alternate (*Designado*) takes charge of the executive office, the citizens shall be called upon to elect a new President.

Article 32: The term of office for the President and Vice-President of New Granada shall be reckoned from the first of April immediately following election. No one shall be eligible for re-election without the intervening of a full term.

Article 33: On assuming office, the President and Vice-President of the Republic shall take an oath before Congress to support the Constitution and laws of the Republic.

Article 34: In addition to executing the laws, the Executive shall have the following powers:

(1) To appoint all national public officials whose appointment has not been assigned to some other authority by the Constitution or law;

(2) To remove freely those officials in the executive branch whose appointment he freely made;

(3) To negotiate and conclude public treaties and conventions with foreign nations and to see to their exact and faithful enforcement after ratifications have been exchanged;

(4) To enter into all kinds of public contracts or agreements relating to matters within the competence of the general government, submitting them to the legislative body for approval if they contain stipulations not provided for in the laws;

(5) To declare war when it has been decreed by the legislative

body and to direct the defense of the country in case of foreign invasion;

(6) To direct military operations at home and abroad as Commander-in-Chief of the land and sea forces, but in no case may he be permitted to take command in person;

(7) To see that the national revenues are properly and faithfully collected and expended;

(8) To present to Congress annually for its approval estimates of the revenues and expenses for the coming year and a general account of the treasury for the preceding year;

(9) To see that justice is fully and promptly administered throughout the Republic and, acting through the Attorney-General and Prosecuting Attorneys (*Fiscales*), bring all delinquents before the Supreme Court or other Tribunals and Courts;

(10) To call Congress into regular session, and, with the consent of the Council of Government and the Attorney-General, call it into extraordinary session when necessary;

(11) To grant amnesties and general or individual pardons for reasons of public convenience; but in no case shall he grant pardons for common crimes, or grant such to public officers for misconduct in office.

Article 35: For the dispatch of all administrative business there may be as many as four Secretaries of State freely chosen by the person exercising the Executive Power and removable at his will. All the acts of the President, with the exception of those appointing or removing Secretaries of State, shall be authorized by one of the said Secretaries, without which requisite they shall not be obeyed.

Article 36: The Vice-President, the Secretaries of State, and the Attorney-General shall form the Council of Government, which shall function as an advisory body to the President and shall be presided over by the Vice-President.

TITLE VI

CONCERNING THE ENACTMENT OF LAWS

Article 37: Laws may originate in either of the two Houses by virtue of a bill presented by one of its members or by a Secretary of State. Bills must be discussed in three debates held on different days; after both Houses agree to a bill in its entirety and as to its details, it shall be sent to the Executive for examination.

Article 38: The President may complete the legislative process by a decree of execution; or he may return the bill to the Congress for

reconsideration if he deems it to be unconstitutional, prejudicial, or defective. In any event he shall send the bill within six days to the House of origin signed or with his objections if he vetoes it. Every bill not returned within six days after the President has received it shall be considered law provided the Congress has not adjourned in the meantime.

Article 39: After receiving the President's objections to a bill, the Houses shall debate it *de novo*, and the results of such action shall be sent to the Executive for his sanction, which under these circumstances may not be denied. In this debate no provisions which were not considered in the President's objections may be debated.

Article 40: In all cases of continued disagreement between the two Houses after the House of origin has insisted upon its text, there shall be a joint session which shall decide by a majority vote whatever may be necessary. The bill thus agreed to shall be sent to the Executive.

TITLE VII

THE JUDICIAL POWER

Article 41: The Judicial Power is delegated by the people to the Supreme Court of the Nation and to the other Tribunals and Courts which may be established by law.

Article 42: The Supreme Court of the Nation shall be composed of three Justices popularly elected for terms of four years, and appointed by the Executive in cases of temporary vacancy. The Supreme Court shall have the following powers:

(1) To take cognizance of actions brought against the President and Vice-President of New Granada and against the Presidential Alternate (*Designado*) while in the exercise of the Executive Power for common criminal offenses, their suspension from office having been decreed by the Senate on petition from the House of Representatives;

(2) To take cognizance of actions brought against foreign Diplomatic Agents where it is permitted by international law;

(3) To take cognizance of all cases of responsibility which may be instituted against Secretaries of State, Diplomatic Agents, Consuls, Judges, and Governors of Provinces for misconduct in office;

(4) To decide controversies between two or more Provinces;

(5) To take cognizance of prize and maritime cases;

(6) To decide upon the nullification of municipal ordinances for repugnance to the Constitution and laws of the Republic;

(7) To commute for important reasons the death sentence upon previous report of the trial court or judge;

(8) To perform all other functions assigned by law.

Article 43: Inferior Tribunals and Courts shall be organized by law, which shall also determine their powers.

Article 44: The Judges and Prosecuting Attorneys (*Fiscales*) shall be popularly elected by the citizens of the several judicial districts for a term of four years. Temporary vacancies shall be filled by the Governor of the Province wherein the court sits.

Article 45: The Attorney-General of the Nation shall remain in office four years and shall be eligible for re-election; he shall represent the Republic in all cases before the Supreme Court.

Article 46: The Justices and Judges of any Tribunal or Court may not be suspended from duty except for an accusation legally made and admitted, and they may not be removed except by a judicial sentence handed down in conformity with law.

TITLE VIII

LOCAL GOVERNMENT

Article 47: The territory of the Republic shall continue to be divided into Provinces for the general administration of national affairs; and the Provinces shall be divided into Parishes. Such division may be varied for fiscal, political, and judicial purposes by the general laws of the Republic; and for the purposes of municipal administration by the municipal ordinances of each Province.

The territorial divisions of Goajira, Caquetá, and others not inhabited by civilized persons may be organized and governed by special laws.

Article 48: Each Province has the constitutional power to do whatever it may deem necessary for its own organization and administration so long as it does not invade those fields within the competency of the general government with respect to which it is under an absolute obligation to conform to the provisions of this Constitution and the laws.

Article 49: No Province may subject the Granadines of another Province or their property to any obligations or charges to which its own inhabitants are not subjected, or deprive them of any rights or protection granted to its own inhabitants.

Article 50: The government or local regime of each Province shall be vested in a Provincial Legislature for legislative matters; for

executive matters it shall be vested in a Governor, who shall also be the agent of the national Executive, and in any other offices which may be established.

Article 51: The Provincial Legislature, the form and functions of which shall be determined by the Provincial Constitution, shall necessarily be popularly elected and may not contain less than seven members.

Article 52: The Governor as agent of the national Executive shall enforce and cause to be enforced within his Province the Constitution and national laws as well as the orders of the President of the Republic. As head of the local executive power he shall fulfil all duties and exercise all powers granted him by the various local institutions.

The term of office for Governor shall be two years, and he may be re-elected for the term immediately following.

Article 53: The President of the Republic may suspend Governors of Provinces from office when he deems it necessary, making a report of his reasons for such action to the Supreme Court in order that the court may fix the duration of such suspension. If said period is for as much as a year, or if the Governor is permanently suspended, a new election for a full term shall be held. The Constitution establishes the manner whereby substitutions shall be made in cases of temporary suspension, it being understood that such power shall be exercised by the President unless contrary provision be made prior to the exercise of such power in any given instances.

Article 54: The person exercising the Executive Power may, through the proper officer of the Public Ministry (*Ministerio Público*) and in default of him through a Prosecuting Attorney (*Fiscal*) named for the purpose, bring charges before the competent judicial authority against Governors of Provinces and all other national or municipal administrative and judicial officials for violation of the Constitution or national laws.

Article 55: The members of the Provincial Legislatures enjoy the same privileges and immunities which, by this Constitution, are granted the Senators and Representatives of the people.

TITLE IX

SUNDRY PROVISIONS

Article 56: No disbursement shall be made from the National Treasury of any sum not appropriated by Congress, or for a larger amount than that appropriated.

Article 57: The present Constitution may be interpreted by means of a law, and it may be added to or amended by any of the following methods:

(1) By a law debated according to the procedure prescribed by this Constitution which, before being sent to the Executive, is accepted by a four-fifths vote of the members of both Houses. In this instance the Executive may not refuse to sanction said law;

(2) By a constituent assembly elected for the purpose and convoked by law; said assembly shall be composed of as many delegates from each Province as is equal to the number of Senators and Representatives to which the Province is entitled. The assembly shall, during its sessions and until the new constitutional provision is adopted, enjoy whatever rights and powers the Congress has;

(3) By a law passed according to ordinary procedure during one session and approved without any important variations by the Congress at its next ordinary session.

Article 58: Existing general laws and municipal ordinances which are not contrary to this Constitution or laws passed in pursuance thereof shall continue in force as long as they are not derogated by competent authority.

Article 59: This Constitution does not require any change in the presidency or vice-presidency; the present incumbents shall continue in office until the end of the terms for which they were chosen at the time of their election.

Article 60: The present members of Congress shall continue in office only until their successors are elected under the new election laws.

Article 61: All functionaries and public corporations are prohibited from exercising any function or authority which has not been expressly delegated to them.

Article 62: In every law or decree amending previous acts there shall be carefully inserted those provisions of the amended act which are to continue in force.

Article 63: The present Constitution shall be published in the capital of the Republic six days after being sanctioned, and on that day the provisions dealing with the passage of legislation, Congress, and the Executive shall enter into force in the capital.

Article 64: It shall be published and go into effect next September 1 in all districts, territories, and villages of the Republic.

Transitory Article: The Executive is empowered to enter into treaties with the Republics of Venezuela and Ecuador for the re-estab-

lishment of the Colombian Union under a federal system of fifteen or more States which shall be definitively organized by a Constituent Convention convoked in accordance with the stipulations of said treaties. Done in Bogotá on the 20th of May 1853.

President of the Senate, Senator for the Province of Azuero:
TOMÁS HERRERA

President of the House of Representatives, Representative for the Province of Bogotá: VICENTE LOMBANA

Vice-President of the Senate, Senator for the Province of Medellín: JORGE GUTIÉRREZ DE LARA

Vice-President of the House of Representatives, Representative for the Province of Chiriquí: RAFAEL NÚÑEZ

Senator for the Province of Antioquia: *Julián Vásquez*. Senator for the Province of Barbacoas: *Rafael Lemos*. Senators for the Province of Bogotá: *Joaquín José Gori* and *Antonio María Silva*. Senator for the Province of Casanare: *José Manuel Lasprilla*. Senator for the Province of Cauca: *José Antonio Gómez Gutiérrez*. Senator for the Province of Zipaquirá: *José María Mantilla*. Senator for the Province of Córdoba: *J. M. Sáenz*. Senator for the Province of Cundinamarca: *José María Maldonado Neira*. Senator for the Province of Chiriquí: *Antonio Villeros*. Senator for the Province of Chocó: *Ramón Argáez*. Senator for the Province of Mariquita: *Eugenio Castilla*. Senator for the Province of Neiva: *Gaspar Díaz*. Senator for the Province of Mompós: *Nicomedes Flórez*. Senator for the Province of Ocaña: *José de J. Hoyos*. Senator for the Province of Pamplona: *Hilarión Camargo*. Senator for the Province of Panamá: *José María Urrutia Añino*. Senator for the Province of Popayán: *Manuel Antonio Bueno*. Senator for the Province of Riohacha: *Nicolás Prieto*. Senator for the Province of Sabanilla: *Luis José López*. Senator for the Province of Santander: *Silvestre Serrano*. Senators for the Province of Socorro: *Florentino González* and *Francisco Vega*. Senator for the Province of Soto: *Pablo Antonio Valenzuela*. Senator for the Province of Tequendama: *Hilario Gómez*. Senators for the Province of Tunjuna: *Pedro Cortés* and *Faustino Barbosa*. Senators for the Province of Tunja: *M. La Rota* and *Camilo Ribadeneira*. Senator for the Province of Valledupar: *Vicente S. Mestre*. Senator for the Province of Vélez: *Juan N. Azuero*. Senator for the Province of Veraguas: *Francisco de Fábrega*. Secretary of the Senate: *Antonio María Durán*.

Representative for the Province of Antioquia: *Emeterio Ospino*. Representative for the Province of Azuero: *Pedro Goitia*. Representatives for the Province of Bogotá: *Rafael Eliseo Santander*, *Januario*

Salgar, *Próspero Pereira Gamba*, *José María Castillo*, and *Alejo Morales*. Representatives for the Province of Cartagena: *Clemente Salazar*, *José de la O. Gómez*, and *Fermín Morales*. Representative for the Province of Barbacoas: *Hernógenes Lemos*. Representative for the Province of Casanare: *Antonio Mantilla Morilla*. Representatives for the Province of Cauca: *Fernando Racines* and *Antonio Mateus*. Representative for the Province of Zipaquirá: *Carlos Martín*. Representative for the Province of Cundinamarca: *Felipe Cordero*. Representative for the Province of Chocó: *Felipe S. Paz*. Representative for the Province of Córdoba: *Florencio Mejía*. Representatives for the Province of Mariquita: *Acisclo Castro* and *R. Lombana*. Representatives for the Province of Medellín: *Nicolás F. Villa* and *Luis Rosendo Roldán*. Representative for the Province of Mompós: *Julián Ponce*. Representatives for the Province of Neiva: *Angel María Céspedes*, *Gabriel González Gaitán*, and *Inocencio Cuenca*. Representative for the Province of Ocaña: *Manuel A. Lemus*. Representatives for the Province of Pamplona: *Braulio Evaristo Cáceres* and *Rafael Otero*. Representative for the Province of Panamá: *Justo Arosemena*. Representatives for the Province of Popayán: *Joaquín Valencia* and *Andrés Cerón*. Representative for the Province of Riohacha: *M. Macaya*. Representative for the Province of Sabanilla: *P. Mártir Consuegra*. Representative for the Province of Santander: *Manuel M. Ramírez*. Representative for the Province of Santamarta: *Fernando Conde*. Representatives for the Province of Socorro: *Antonio Gómez Santos*, *Gonzalo Tavera*, *Estanislao Silva*, *Ricardo Roldán*, and *Ignacio Gómez*. Representative for the Province of Soto: *Ruperto Arenas*. Representative for the Province of Tequendama: *Ignacio Moreno*. Representatives for the Province of Tundama: *Luis Reyes*, *Joaquín Gaona*, *Santos Gutiérrez*, *Raimundo Flórez*, and *Zenón Solano*. Representatives for the Province of Tunja: *S. del Castelblanco*, *José María Solano*, *David Neira*, and *Santos Acosta*. Representative for the Province of Túquerres: *Federico Concha*. Representative for the Province of Valledupar: *A. Núñez*. Representatives for the Province of Vélez: *J. Herrera*, *Liborio Franco*, and *Alejandro González*. Representative for the Province of Veraguas: *Luis Fábrega*. Representative for the Province of Bogotá and Secretary of the House of Representatives: *Antonio María Pradilla*.

CONSTITUTION
OF THE
GRANADINE CONFEDERATION
(Constitution of 1858)

Constitution of 1858

HISTORICAL BACKGROUND

THE CONSTITUTION OF 1853 did not require the election of a new president (Art. 59); therefore General José María Obando, who was inaugurated April 1, 1853, remained in office. The constitution entered into force May 20, 1853. From the outset Obando favored the moderate liberals, who, with the support of the Army, had elected him to office. His government was made very insecure by increasing friction between the parties and factions and by the fact that his own party had no decisive control of Congress.

The radicals (*gólgotas*) introduced legislation to reduce the standing army and tariff duties. The first of these two bills exasperated the Army, and the second gave offense to those workers and employers who were protectionists. It should be remembered that these were the groups that elected Obando. These moderate liberals brought obstreperous pressure to bear upon Congress to defeat the measures. This in turn aroused the radicals to action, and a bitter factional dispute developed. Obando made no real effort to control the situation. Matters went from bad to worse until on April 17, 1854, General José María Melo established himself as dictator.

Melo was the commanding officer of the garrison in Bogotá. The garrison, reinforced by the moderate liberals who had been armed at the arsenal, drove Congress and other officers of the government out of Bogotá. Melo offered the dictatorship to Obando, who declined it. Then the rebel leader announced that the Constitution of 1853 was suspended and proclaimed himself to be in charge of the government. Such high-handed tactics by Melo brought the conservatives and radicals together to form an *ad hoc* legitimist party, so to speak. The revolt spread over the country.

On April 20, 1854, Tomás Herrera, who had escaped from Bogotá when the revolution started, issued a decree in Chocontá that he was in charge of the executive power of the legitimate government. He based this action on the fact that he was the official Presidential Alternate (*Designado*). Herrera then proceeded to organize the government's opposition to Melo.

The Vice-President, second in line of presidential succession, was José Obaldía, who also had escaped from Bogotá in time. He gathered together his Secretaries of State at Ibagué on August 5, 1854,

and took over the executive power from Herrera. Obaldía was able to get the Congress assembled and reorganized by September 22. One of the first acts of the Congress was to impeach Obando.

The civil war lasted about seven months. Melo was defeated when the government forces captured Bogotá on December 4, 1854.

According to the terms of the Constitution of 1853 the Vice-President is elected two years after the President. This staggering of terms, incidentally, was adopted to reduce the possibility of rivalry between the President and the Vice-President. Obando was elected for the term April 1, 1853–April 1, 1857. After his impeachment in 1855 the presidency was vacant for the remainder of the term. Obaldía, the Vice-President, had been elected for the term April 1, 1851–April 1, 1855. He had served as President during the revolt. Dr. Manuel María Mallarino, who was elected to succeed Obaldía, took office April 1, 1855. He immediately took charge of the executive power because, as just stated, the impeachment of Obando had left that office vacant.

In this election the moderate liberals (Melo supporters) offered no candidate. The radicals (*gólgotas*) supported Dr. Manuel Murillo. The conservatives won with Mallarino. Although a conservative, Mallarino apparently realized that he did not have control of the government. There were liberals of all degrees in the Congress. Liberal elements, particularly the radicals, had contributed much to the re-establishment of the legitimate government. In view of all this he formed a coalition government.

The problem of federalism again came to the fore. In its session of 1855 Congress requested the Provincial Legislatures to inform Congress of their opinion as to the adoption of a federal system for New Granada. Fourteen Provinces favored the idea, four were opposed, and five expressed no opinion.¹ Among those favoring the idea were some Provinces that had been traditionally conservative, i.e., anti-federalist.

On February 27, 1855, a little over a month before the conservative Mallarino took office, Congress amended the constitution so as to make it possible for that body to combine the Provinces of Panamá, Azuero, Veraguas, and Chiriquí to form the State of Panamá. The law creating the State gave it a great measure of local self-government. Conditions prevailing on the Isthmus, along with its remoteness from the capital, offered some justification for this measure. It was, however, the opening wedge for federalism, which became a reality

¹ José de la Vega, *op. cit.*, pp. 206-207.

in a very short time. This same amendment provided that Congress might form similar States out of any portion of the territory of New Granada.

Many Provinces, among them conservative strongholds, insisted upon statehood. In 1856 and 1857 the following States were created: Antioquia, Santander, Cauca, Cundinamarca, Boyacá, Bolívar, Magdalena. Thus was ushered in what the Colombians call the centrofederal period. Those parts of the country formed into States had a federal relationship with the national government, whereas those parts still organized as Provinces had a unitary relationship. The conservatives in Congress approved of and assisted in bringing about such a development. The conservatives, the traditional right arm of the centralists, had become federalists.

As we have seen, any group in Colombia dissatisfied with what the national government was doing sought to correct the situation by resort to federalism. When the conservatives were clearly in power and their program was being effectuated, the liberals wanted federalism. The liberals gave the country the Constitution of 1853, which the conservatives had most reluctantly accepted. The liberals were sufficiently powerful at that time to make it impossible for the conservatives to do otherwise. By 1855-1857 the conservatives' influence was increasing. Although they had no clear control of government, their influence was definitely growing. José de la Vega attributes their support of federalism to the fact that the conservatives resented deeply the separation of Church and State in the Constitution of 1853. They favored federalism in order to obtain a large measure of local autonomy so as to afford places of refuge in "some Provinces" to "the victims" of the liberalism of the Constitution of 1853. Vega offers historical evidence to this effect, a summary of which is not germane to the purpose of this introduction.²

In the election for the presidential term 1857-1861 the liberals were split. The radical element of the party, the *gólgotas*, offered Manuel Murillo. The *melistas*, the moderate liberals who supported Melo's *coup d'état*, ran General Tomás Cipriano Mosquera. The *melistas* were supported by some of the more moderate conservatives. Together they tried to establish a third party, the National party.

The division among the liberals enabled the conservatives to win the election. Dr. Mariano Ospina Rodríguez, a thoroughgoing conservative, became President on April 1, 1857. The conservatives also

² *Op. cit.*, pp. 207-208.

had a large majority in each House of Congress, and thus the party had control of both branches of government.

President Ospina felt so secure in his position that he excluded the moderate liberals from the government. He appointed only orthodox conservatives like himself, whereas his conservative predecessor, Mallarino, was compelled by circumstances to organize a coalition government. As will be seen in the introduction to the Constitution of 1861, the exclusion of the moderate liberals, or draconians, was one of the important causes of the revolt of 1860.

As a result of the elections, the time seemed most propitious for the re-establishment of the conservative program. One of the first acts of the conservative Congress was to amend the constitution by simplifying the amendment process itself. Article 57 provided that Congress could amend the constitution if an amendment were "accepted by a four-fifths vote of the members of both Houses." Having the necessary majority in both Houses, on February 10, 1858, the Congress amended the constitution so as to make the clause just quoted read that the constitution could be amended "in the same manner as ordinary legislation may be amended."³ Now the conservatives were in a position to amend the constitution to their advantage by a simple majority of both Houses. This would continue to be an advantage to them in the event of future reduction of their then very large majorities in the two Houses. With this amendment the conservatives were in a position to consolidate their power. This indeed seemed an auspicious time, but an ironic fate decreed otherwise.

The "centro-federal" organization in which the conservatives found the country, and to which they had in part contributed, made it imperative that a new constitution be adopted. The Constitution of 1853 was no longer in harmony with political reality. This being the case, the alternatives with which the conservatives were faced were obviously stronger centralization or federalization.

It is true that during the period of 1855-1857 the conservatives had contributed to federalization by supporting legislation creating certain States. But this was a matter of expediency, not of principle. They followed this unorthodox line as a means of escape from the liberal program imposed by the Constitution of 1853. By supporting federal tendencies at that time they helped weaken the constitution, which they resented. This compromise with principle was necessary because they did not have control of the government, more particularly of the Congress. But by 1858 their control was complete. So far as Congress

³ Pérez, *op. cit.*, p. 80.

was concerned, so far as legality was concerned, they could select either of the alternatives. But as a matter of practical politics, they had no choice, and therein lies the irony of the situation.

In this very short time the newly created States had developed a deep attachment to the greater autonomy and independence which their status provided. It became evident to the conservatives that the States were not likely to renounce their favored position peacefully. To avoid a possible civil war, the conservatives once more compromised with principle.

The Constitution of 1858 gave expression to many of the liberal doctrines found in that of 1853. This was indeed one of the most confused and confusing periods of Colombian constitutional history.

POLITICAL ORGANIZATION

A brief description of the national government is in order before a discussion of the relationship of the state and national governments.

There was equality of representation in the Senate, three Senators for each State (Art. 20). The House of Representatives was composed of members elected in each State on the basis of population (Art. 21). Members of both Houses were directly elected by the voters of the several States (Art. 60). The term of office for Senators and Representatives was two years (Art. 61). Congress was granted the power to legislate upon certain specifically delegated subjects of national scope (Arts. 15 and 29).

The President was elected "by a direct vote of the citizens of the Confederation . . ." for a term of four years (Arts. 60 and 61). No Vice-President was provided for in the Constitution of 1858. Each year Congress selected three Presidential Alternates (*Designados*) and determined their order of succession in the event of permanent or temporary disability of the President (Art. 42). The President was granted the power to prevent armed inter-State conflicts, and he was given the obligation to maintain the public order by employment of the armed forces of the Confederation or of the States if necessary (Art. 43[11] and [20]). He was not authorized, however, to suspend the constitution and assume extraordinary powers.

The national court system was composed of a Supreme Court "and the other Tribunals and Courts which may be established by law" (Art. 47). The Justices of the Supreme Court were selected by Congress from ternaries submitted by the State Legislatures (Art. 60). Their term was four years (Art. 61). The Supreme Court was given two important new functions: it could suspend the execution of State

legislation which was contrary to the national constitution and laws (Art. 50), and it was also given jurisdiction of inter-State controversies (Art. 49[7] and [14]).

Religious freedom was guaranteed as one of the national rights of "all inhabitants and transients" (Art. 56[10]). Moreover, it was prohibited to the States "to interfere in religious matters" (Art. 11[3]). In addition to the right to worship, religious property and revenues were given constitutional protection (Art. 67).

"The freedom to express thoughts in print without any responsibility whatsoever" was one of the liberal ideas incorporated into this constitution (Art. 56[4]).

Another liberal idea meriting some notice is the provision that the States were forbidden "to impede traffic in arms and munitions" (Art. 11[4]). Nor was the power to interfere with this trade delegated to the national government. The liberals insisted upon this provision for the same reason which prompted them to advocate unlimited freedom of the press and the abolition of the death penalty for political crimes. The basic reason for all three of these demands was the desire to create a legal condition wherein opposition to the conservatives would be more effective and less hazardous.

Whenever the conservatives were in power, their constitutions gave Congress practically complete power to define abuse of freedom of the press and to prescribe the penalties. Conservative Congresses turned this power to their political advantage by obstructing liberal propaganda and thereby depriving the liberals of a pacific means of developing their party and doctrine. As soon as the liberals became effective in Colombian politics, unlimited freedom of the press became a part of the constitutional law of the country. As pointed out above, this unlimited freedom appeared in the Constitution of 1853 and was reiterated in the Constitution of 1858.

The death penalty for political crimes obviously increased the hazard of opposition and revolt. For this reason the liberals had always been opposed to such an extreme penalty. During the 1850's Congress several times by legislation prohibited death as a penalty for political crimes at the insistence of the liberals, but this prohibition did not achieve the dignity of constitutional law until the Constitution of 1863.

The liberals had long felt that government control of domestic and foreign traffic in arms and munitions was a distinct handicap to them because up until the 1850's the conservatives were always in control of the government. Hence the conservatives had access to much greater supplies of arms and munitions with which to keep the liberals

under control. By 1858 the liberals had acquired sufficient influence and importance in Colombian politics to be able to force the acceptance of a prohibition on interference in this traffic.

The governmental organization of the republic under the Constitution of 1858 was a truly federal one. The constitution begins by declaring: "The States of Antioquia, Bolívar, Boyacá, Cauca, Cundinamarca, Magdalena, Panamá, and Santander confederate forever . . ." (Art. 1). Unlike the condition in the United States of America, the Colombian States were created by the national government operating under the Constitution of 1853. Because of this fact, some writers are disturbed by the situation whereby these States, creatures of a national government, united to form a national government.⁴ This seems to be a needless perturbation.

It must be granted that these eight States were created by the same national government that gave them whatever powers and jurisdiction they had up to the adoption of the Constitution of 1858. But the Constitution of 1853 and its government came to an end when the Constitution of 1858 was adopted (Art. 76). Does the passing of what we shall call the government of 1853 bring to an end all of its creatures? Does the death of the creator effect the death of the creature in law or in fact? Obviously, not in fact, because the States continued to exist. It is here suggested that they continued to exist *de jure* as well as *de facto*.

As we shall see, the powers of the government of 1853 were not transmitted to that of 1858, because the Constitution of 1858 provided for an entirely different distribution of powers. To whom, then, did the powers of the government of 1853 revert? These powers reverted to the people because, ever since the Constitution of 1821, it had been established in Colombian constitutional theory that sovereignty resided in the Nation or people. If in the exercise of their constituent sovereignty the people chose to act through their States to form a union, what doubt can be cast upon the legality of such a union? Moreover, what doubt can be cast upon the legality of the States' existence?

With the exception of the Constitution of 1811, which set up a federal organization, no other constitution until that of 1858 provided that "all matters which are not delegated by this Constitution to the general government of the Confederation are reserved to the States" (1811, Art. 7[8]; 1858, Art. 8). This unequivocal recognition of State "residuary" powers provided one basic element of federalism in

⁴ E. g., José de la Vega, *op. cit.*, p. 218.

that it recognized two separate spheres of action and defined their dividing line in the manner found in the United States Constitution.

As to inter-State relations, there was a "full faith and credit" clause (Art. 10), a "privileges and immunities" clause (Arts. 11[11] and 57), and an "inter-State rendition" clause (Art. 12).

In the introduction to the Constitution of 1853 much was made of the point that in a truly federal system the member States must have a right of existence which is amply protected against jeopardy by the national government. It was also pointed out there that Congress, having the power in itself to amend the constitution, could rob the right of existence of all of its vitality. This was demonstrated in the amendment and the legislation of 1855-1857, which abolished certain Provinces and united them to form States.

This constitution (1858) recognized the States' right of existence and gave the right ample protection. The general government was given the power to create new States, but only "*on petition of the Legislatures of the States dismembered*", provided that the States created as well as those dismembered have a population of at least 150,000 persons" (Art. 15[8], italics inserted). The right of existence was further protected by the nature of the amending process of the Constitution of 1858, which made a repetition of the legislation of 1855-1857 impossible.

In order to assure the continuance of a federal system once established, it would seem indispensable that the member States participate effectively in the amendment process. With the exception of the Constitution of 1811 (Art. 74), no other constitution until that of 1858 provided for participation by the Provinces or States. The Constitution of 1858 provided that no amendment could be considered or adopted unless requested by a majority of the State Legislatures (Art. 71). This protected the existence and the reserved powers of the States against adverse amendments.

Unlike preceding constitutions, that of 1858 did not tie local (State) administration into national administration. The State Governors were independent. They were elected by the voters in each State. State Legislatures determined their powers and functions. In other words, the Governor no longer had a dual function as agent of the President and head of local administration. The national government had to provide "as many officers as may be deemed necessary as agents of the general government for executing the orders of the same in the several States" (Art. 45). In short, each government had its own corps of officials.

The States could establish their own court systems. The Supreme Court decided questions of conflict of jurisdiction arising between the courts of two States, or between the courts of a State and those of the national government (Art. 49[14]).

Under the terms of the Constitution of 1858, the national government had the power to enforce its laws by its own officers in the territory of the several States. It was supreme within its own sphere.

The President was responsible for the maintenance of domestic peace and the enforcement of the national constitution and laws (Art. 43[1]). One of the powers delegated to the national government was the power to restore peace between two or more States; in doing this the armed forces, including the militia, could be employed (Art. 15[10]). The Supreme Court had the power to settle definitively inter-State controversies (Art. 49[7]). Finally, the Supreme Court had the power "to suspend the execution of State legislative acts which are contrary to the Constitution or laws of the Confederation, reporting such suspension to the Senate in order that that body may decide definitively upon the validity or nullity of said acts" (Art. 50).

In conclusion it can be said that the governmental organization set up by the Constitution of 1858 was a truly federal system for the following reasons: The national and State governments each had clearly defined spheres of action. The governments of each were independent of each other as to personnel, jurisdiction, and functions. The States participated effectively in the amendment process. The States had an amply protected right of existence. There were inter-State obligations based upon constitutional definition enforceable by the national government. The national government was supreme within its own sphere with the power to maintain that supremacy.

A translation of the text of the *Constitution of the Granadine Confederation*, herein referred to as the Constitution of 1858, follows.

CONSTITUTION
OF
THE GRANADINE CONFEDERATION

The Senate and House of Representatives in Congress assembled,
Exercising the power granted Congress by the Legislative Act of
February 10, 1858, amending Article 57 of the Constitution, and
Considering

That in consequence of the variations introduced into the political organization of New Granada by the legislative acts which have constituted eight federal States therein, constitutional measures are necessary in order to determine precisely and clearly the powers of the general government and to establish bonds of union between the States;

Under the protection of Almighty God, Creator and Supreme Legislator of the Universe,

Have agreed to decree and do hereby decree the following

CONSTITUTION OF
THE GRANADINE CONFEDERATION
TITLE I

THE NATION AND INHABITANTS

Article 1: The States of Antioquia, Bolívar, Boyacá, Cauca, Cundinamarca, Magdalena, Panamá, and Santander confederate forever; they form one sovereign, free, and independent Nation known as the Granadine Confederation and submit themselves to the decisions of the general government according to the terms established in this Constitution.

Article 2: The boundaries of the territory of the Granadine Confederation are the same as those that in 1810 separated the Viceroyalty of New Granada from the Captaincies-General of Venezuela and Guatemala, and from the Portuguese possessions in Brazil; with regard to the southern boundary it shall be provisionally the same as that designated in the treaty entered into with the Government of Ecuador on July 9, 1856.

Article 3: The following are Granadines:

(1) All those born or who may be born in the territory of the Confederation;

- (2) Those born abroad of Granadine parents;
- (3) Those who obtain letters of naturalization;
- (4) Those who, not being included in the above sections, possess the qualifications of Granadines according to the Constitution of 1853.

Article 4: The following are Granadines by birth:

- (1) Those born or who may be born in the territory of the Confederation, and children of Granadines born or who may be born abroad;
- (2) Those Colombians who, having served the national government, are now considered Granadines.

Article 5: All male Granadines over twenty-one years of age, and those below that age who are or have been married, are citizens capable of electing and being elected to the public offices of the Confederation in accordance with this Constitution.

Citizenship shall not be suspended except for a citizen's having been condemned in a criminal action or for mental derangement.

TITLE II

THE PROPERTY AND OBLIGATIONS OF THE CONFEDERATION

Article 6: The following are the property of the Confederation:

- (1) All real and personal property now belonging to the Republic;
- (2) The public lands not disposed of, and those, having been disposed of, whose titles may become void;
- (3) The salt springs now belonging to the Republic;
- (4) The emerald and salt mines whether situated in public lands or otherwise;
- (5) The active credits that have been acknowledged in favor of the Republic, or that may be recognized in favor of the Confederation;
- (6) The rights reserved to the Republic in the Panamá Railroad.

Article 7: The following are the obligations of the Confederation:

- (1) The domestic and foreign debt that is today recognized by the Republic, or that may be recognized by the Confederation;
- (2) The pensions legally granted by the Nation;
- (3) All expenses for the government of the Confederation.

TITLE III

POWERS AND DUTIES OF THE STATES

Article 8: All matters which are not delegated by this Constitution to the general government of the Confederation are reserved to the States.

Article 9: The governments of the States shall be popular, representative, elective, and responsible.

Article 10: The authorities of each of the States have the duty of executing and causing to be executed the Constitution and laws of the Confederation, the decrees and orders of the President thereof, and the decisions of the national Tribunals and Courts.

In each of the States full faith and credit shall be given to the records, acts, and judicial sentences and proceedings of the other States.

Article 11: It is prohibited to the governments of the States:

(1) To alienate to foreign powers any part of their territory or to enter into treaties or conventions with such powers;

(2) To permit or authorize slavery;

(3) To interfere in religious matters;

(4) To impede traffic in arms and munitions;

(5) To impose levies on foreign commerce, whether of exportation or importation;

(6) To legislate during the term of the concession upon matters relating to any privileges or exclusive rights granted to companies or individuals by the government of the Confederation in any manner contrary to the terms on which they may have been granted;

(7) To impose any duties on national bodies or public functionaries;

(8) To make use of any other than the national flag or coat of arms;

(9) To levy taxes on articles to be consumed in another State;

(10) To levy taxes upon the effects or property of the Confederation;

(11) To subject the inhabitants of another State or their property to any burdens other than are placed upon the inhabitants of that State and their property;

(12) To levy or collect duties or taxes upon produce or goods subject to national taxation or monopolized by the government of the Confederation except as a tax on consumption.

Article 12: It is obligatory for the authorities of each State to surrender to those of any other in which a crime may have been committed the person or persons claimed by them and against whom a warrant of arrest has been issued. Also to honor warrants and requisitorial letters sent them by the authorities of another State.

Article 13: All national functionaries are exempt from any forced service or personal contributions that may be established by the laws of the States.

Their property or income from private employment may be taxed by said laws in the same proportion as the property or income of other citizens; but no tax shall be levied upon the salary they receive from the treasury of the Confederation.

Nor may they be imprisoned on a criminal charge without being previously suspended from office according to law.

TITLE IV

THE GOVERNMENT OF THE CONFEDERATION

Article 14: The general government of the Granadine Confederation shall be vested in a Congress which makes the laws, a President who executes them, and a judicial body which applies the laws in particular cases.

SECTION I

MATTERS WITHIN THE COMPETENCY OF THE GENERAL GOVERNMENT

Article 15: The following are exclusively within the competency of the general government:

(1) The organization and reform of the government of the Confederation;

(2) The relations of the Confederation with other nations;

(3) The defense of the Confederation with the right to declare and carry on war and to make peace;

(4) Maintenance of internal order and peace when it is interrupted between two or more States, or when in any State peace and order should be disturbed because of disobedience of the Constitution, national laws, or authorities;

(5) The organization, direction, and maintenance of the armed forces in the service of the Confederation;

(6) The public credit of the Confederation;

(7) The creation, organization, administration, and application of the revenues of the Confederation;

(8) The creation of new States, which, however, may not be done except on the petition of the legislatures of the States dismembered and only in those cases wherein the States created as well as those dismembered have a population of at least 150,000 persons;

(9) The admission of new States when independent communities desire to unite with the Confederation, which shall be effected by treaty;

(10) The restoration of peace between States;

(11) The settlement of disputes between States;

- (12) The determination of the type, weight, form, and denomination of money and the establishment of official weights and measures;
- (13) All matters concerning maritime legislation as well as that concerning foreign commerce and coastwise trade;
- (14) Maintenance of freedom of commerce between the States;
- (15) The government and administration of the forts, maritime ports, river and land frontiers, arsenals, dikes, and other public establishments and property belonging to the Confederation;
- (16) The power to pass civil and penal legislation with respect to those matters which are by the terms of this article within the competency of the government of the Confederation;
- (17) The taking of a general census of the population of the Confederation;
- (18) The determination of boundaries which the States should have in accordance with the legislative acts which created them whenever controversies or doubts arise concerning said boundaries;
- (19) The regulation of the interoceanic routes which already exist or may be opened up in the territory of the Confederation;
- (20) The establishment of boundaries between national and foreign territory;
- (21) The naturalization of aliens;
- (22) The navigation of rivers which run through more than one State or which pass to a contiguous country;
- (23) The adoption of the national flag and coat of arms.

SECTION 2

MATTERS OF COMMON JURISDICTION

Article 16: The general government shall have concurrent jurisdiction in the following matters:

- (1) The promotion of public education;
- (2) The postal service;
- (3) The granting of exclusive privileges or aids for opening, improving, and protecting land and river communications.

SECTION 3

THE LEGISLATIVE POWER

Article 17: The Legislative Power shall be exercised by a Congress composed of two Houses known as the Senate and House of Representatives.

Article 18: The Congress shall meet in ordinary session annually on February 1 in the capital of the Confederation.

For any grave and important reason it may meet at any other place or hold its sessions temporarily elsewhere.

The ordinary sessions shall last for sixty days.

Article 19: Congress may meet in extraordinary session by agreement of the two Houses or when called by the Executive.

Article 20: The Senate shall be composed of three Senators for each State.

Article 21: The House of Representatives shall be composed of members elected in each State upon the basis of the population thereof calculated at the ratio of one Representative for each sixty thousand inhabitants, and an additional Representative for any remainder amounting to not less than twenty-five thousand.

Article 22: In order that Congress may open and continue its sessions an absolute majority of the membership must be present. One of the Houses may not open its sessions on a different day from the other, or continue them while the other is in recess. The mutual consent of both Houses is required to transfer their sessions temporarily to another place or to suspend the sessions for more than two days.

Article 23: Senators and Representatives shall enjoy immunity of person and property during the sessions; while traveling to and from their homes they may not be summoned in any civil or criminal case.

The law shall determine the proper length of time for such journeys.

Article 24: The Secretaries of State and the Attorney-General may take part in the debates in each House, but they shall have no vote.

Spectators who may be present are prohibited from speaking and from giving any sign of approval or disapproval of the ideas expressed in the debates.

Any person doing so shall be expelled from the building in which the sessions are being held.

Article 25: Each House has the power to create whatever offices it deems necessary for the performance of its work and for the policing of the building in which the sessions are held and to make whatever regulations may be necessary for its procedure. In these regulations correctional penalties may be established for any transgressions committed by the members and for offenses by other individuals against the House or against the immunities of its members.

Article 26: Senators and Representatives are not responsible for the votes and opinions expressed in debate. No authority can at any time bring them to account for their votes and opinions under any

pretext whatsoever. This immunity also extends to those officers who, according to Article 24, may take part in the debates.

Article 27: Senators and Representatives may not accept any office to which the President of the Confederation may freely appoint except those of Secretary of State, Diplomatic Agent, or military rank in time of war.

The acceptance of such appointments vacates the congressional seat.

Article 28: While in office Senators and Representatives may not themselves or through third persons enter into any contract with the general government.

Nor shall they be able to accept from any foreign government, company, or individual the power of attorney for the negotiation of any business with the government of the Confederation.

Article 29: The following are the exclusive powers of Congress:

(1) To appropriate the sums to be taken from the Treasury of the Confederation to meet the expenses of the Confederation;

(2) To decree the sale of the property of the Confederation and its application to public uses;

(3) To decide upon such public treaties and conventions as the President of the Confederation may conclude with other nations, and upon the contracts he may make with the States or with private persons, whether native or foreign, which he is obliged to submit to its consideration;

(4) To determine the contributions and taxes necessary for the expenses of the services of the Confederation;

(5) To examine and pronounce finally upon the general accounts of the Confederation;

(6) To fix annually the strength of the land and naval forces in the service of the Confederation;

(7) To grant permission for the passage of foreign troops through the territory of the Confederation;

(8) To authorize the President of the Confederation to declare war on another nation;

(9) To grant amnesties or general pardons for political offenses affecting the general order of the Confederation;

(10) To grant privileges and aids for the steam navigation of rivers which serve as a channel of commerce for more than one State, and to construct rail, wagon, and bridal roads which connect the interior of one or more States with navigable rivers, seaports, or contiguous countries; however, this does not prevent the States from do-

ing the same according to their laws, and from running such roads through the public lands of the Confederation;

(11) To establish Tribunals and Courts and other functionaries necessary for the services of the Confederation;

(12) To select the capital of the Confederation;

(13) To canvass the elections of the chief officers of the Confederation and communicate the results to those elected;

(14) To legislate on all matters within the competency of the general government.

Article 30: Congress may not delegate any of the powers referred to in the preceding article.

Article 31: Each House is competent to hear and decide complaints made concerning the election of its members.

Article 32: The President of the Senate shall be the presiding officer of joint sessions; in his absence the President of the House of Representatives, and in his absence the respective Vice-Presidents in the same order.

SECTION 4

CONCERNING THE ENACTMENT OF LAWS

Article 33: Bills may originate in either of the two Houses by introduction by one of the members thereof, by the President acting through one of the Secretaries of State, or by the Attorney-General of the Confederation.

Article 34: No bill may become law unless it has had in each House three readings on separate days and has been approved by a majority of the members present in each House.

Article 35: After approval by the Houses every bill must be approved by the President of the Confederation, who has the right to return the bill, along with his objections, to either of the two Houses for reconsideration.

Article 36: Should a bill be returned as unconstitutional or altogether inexpedient and one of the Houses declare the objections made by the President of the Confederation to be well-founded, the bill shall be placed in the archives and may not be reconsidered during that session.

If both Houses declare the objections of the President of the Confederation to be ill-founded, the bill shall be returned; in this event the President may not refuse to sanction it.

Article 37: If the objections of the President of the Confederation apply to only one or several of the provisions of the bill, and both

Houses declare the objections to be well-founded wholly or in part, then the bill shall be reconsidered and the necessary modifications of that portion or portions to which the objections refer shall be made.

Should the modifications adopted be in accord with the proposals made by the President of the Confederation, he may not refuse to sanction it; but if they are not so, or any new provisions are introduced, or any deleted which were not objected to by him, the President may offer new objections to the bill.

If one of the Houses declares the objections to be ill-founded and the other House declares the contrary, the bill shall be placed in the archives.

In all cases in which both Houses declare the objections to be ill-founded, it is the duty of the President of the Confederation to sanction the bill.

Article 38: The President of the Confederation is allowed six days in which to return a bill with his objections if the bill consists of not more than fifty articles; if it contains more than this number of articles, he is allowed ten days.

Every bill not returned within the above periods of time must be sanctioned; but if the Congress recesses during the period granted the President, he must either sanction it or object to it within the thirty days following the day of recess and publish his action.

Article 39: All bills left pending in the session of one year may be considered in the following session only as new bills and hence subject to all the readings prescribed by this Constitution.

Article 40: Each House may insist for a second time upon the provisions it may have approved in the bill; but if after this second insistence the other House does not agree, such provisions shall be deleted and not form part of the bill.

If the insistence should refer to the entire bill, and on its repetition the other House should not agree to it, the bill shall be tabled and may not be reconsidered during the session of that year.

This does not prevent one or more of the provisions of a rejected bill from forming part of any new bill that may be introduced.

SECTION 5

THE EXECUTIVE POWER

Article 41: The Executive Power of the Confederation shall be exercised by an officer known as the President of the Confederation, who shall take office on the first of April immediately following his election.

Article 42: In case of permanent or temporary disability of the President of the Confederation, this title shall be assumed and the Executive Power exercised by one of the three Presidential Alternates (*Designados*) who are chosen each year by an absolute majority of Congress, which also determines their order of succession.

But if none of the Presidential Alternates is present in the capital of the Confederation, or for some other reason none can take over the executive office, the Attorney-General shall take charge *ad interim*; this being impossible, the executive office shall devolve upon the oldest Secretary of State.

The law shall determine when a new election for President is to take place in cases of permanent vacancy.

The term for the exercise of the Executive Power by the Presidential Alternates (*Designados*) shall be one year reckoned from the first of April following election.

Article 43: The following are the powers of the President of the Confederation:

(1) To take necessary measures for the complete execution of the laws;

(2) To see that the national revenues are properly and faithfully collected;

(3) To negotiate and conclude public treaties and conventions with foreign nations, with the previous consent of Congress to exchange ratifications, and see to their exact and faithful execution;

(4) To negotiate and conclude all public agreements and contracts upon matters within the competency of the government of the Confederation and with the approval of Congress to carry them into effect. This approval is necessary only when the agreements or contracts relate to extraordinary services the stipulations of which were not previously authorized by law;

(5) To declare war when it has been decreed by Congress and to direct the defense of the country in case of foreign invasion; to call the militia of the different States into active service if necessary;

(6) To conduct the operations of war as the supreme head of the Army and Navy of the Confederation, but not to command the land and sea forces in person;

(7) To appoint all persons to the public offices of the Confederation whose appointment has not been entrusted by the Constitution or laws to some other authority;

(8) To remove all officers whom he has freely appointed;

(9) To present to Congress within the first eight days of the ordinary sessions the estimates of revenue and expenditures of the Confederation, and the general account of the budget and treasury for its approval;

(10) To see that justice is properly and speedily administered, instituting through the Public Ministry (*Ministerio Público*) the trial of all delinquents and the dispatch of all civil suits pending in the Tribunals and Courts of the nation;

(11) To prevent any armed aggression by one State of the Confederation against another or against a foreign nation, making use of the armed forces of the Confederation for this purpose;

(12) To see that Congress meets on the day appointed by the Constitution, taking timely measures in order that the Senators and Representatives may receive the assistance provided by law for their journey;

(13) To grant amnesties and general or individual pardons to persons responsible for offenses against the public order in the case provided for in Article 15, paragraph 4;

(14) To grant patents to authors and inventors guaranteeing them for fixed periods of time property in their literary productions and in useful inventions applicable to new industrial operations or to the improvement of existing ones;

(15) With the prior consent of the Senate, to appoint Generals and Colonels of the Army and Navy;

(16) To grant letters of naturalization in accordance with law;

(17) To grant sailing licenses;

(18) To present Congress in the opening days of the ordinary sessions a written report on the state of the Confederation's business, accompanied by reports of the Secretaries of State;

(19) To furnish the Houses such information as they may request, except that relating to diplomatic negotiations which in his judgment should not be divulged;

(20) To see to the preservation of the public order, and when it is disturbed to employ the armed forces of the Confederation or those of the States against those disturbing the same;

(21) To perform all other functions that may be assigned to him by the Constitution and laws.

Article 44: For the dispatch of the business within the competency of the government of the Confederation, the President may have as many as three Secretaries of State freely appointed by him. All the acts of the President with the exception of appointing or removing the

Secretaries of State shall be authorized by one of the said Secretaries, without which requisite they are not to be obeyed.

Article 45: The law may provide as many officers as may be deemed necessary as agents of the general government for executing the orders of the same in the several States. In the meantime, the supreme chiefs of the States and their officers shall fulfil the commands of the President of the Confederation. In like manner they shall execute the said commands in any temporary default of those officers of the Confederation whose business it may be so to do.

Article 46: Any citizen elected to the Presidency who has actually assumed and exercised that office may not be re-elected for the succeeding term.

SECTION 6

THE JUDICIAL POWER

Article 47: The Judicial Power of the Confederation shall be exercised by the Senate, the Supreme Court, and the other Tribunals and Courts which may be established by law.

Article 48: The Supreme Court shall be composed of that number of Justices which the law shall determine, but this number may not be less than three.

Any alteration in the personnel of the Supreme Court shall not apply to those Justices who may be in office at the time such alteration is made.

Article 49: The Supreme Court shall have the following powers:

(1) To take cognizance of all cases affecting Ministers Plenipotentiary and other Diplomatic Agents accredited to the government of the Confederation as permitted by international law or by treaties;

(2) To take cognizance of actions brought against the President of the Confederation and the Secretaries of State for common criminal offenses, their suspension from office having been previously declared by the Senate after that body has decided that there is just cause for instituting proceedings;

(3) To take cognizance of all criminal actions brought against Presidential Alternates (*Designados*) while exercising the Executive Power, against the Attorney-General of the Confederation, and against Justices of the Supreme Court;

(4) To take cognizance of all cases involving questions of responsibility brought against diplomatic and consular officers of the Confederation for malfeasance in office;

(5) To take cognizance of all cases of responsibility brought

against the Judges of the Tribunals of the Confederation as well as against Governors and Judges of State Superior Tribunals for violation of the Constitution and laws of the Confederation;

(6) To take cognizance of cases involving questions of responsibility brought against Generals and Commanders of the national forces and against the chief officials of the Treasury of the Confederation;

(7) To decide all controversies arising between the States themselves, or between one or more of them and the general government of the Confederation involving questions of competency, property rights, and all other matters of dispute;

(8) To take cognizance of all litigation concerning maritime prizes, or relating to national or foreign ships which have contravened the legal enactments of the Confederation relative to foreign commerce, or relative to the formalities which are to be observed in national ports or in navigation of the seas and rivers;

(9) To decide in the last instance upon all controversies which arise in any State in which one or more citizens of different States or aliens are parties, provided the said parties take an appeal from the decision of the State Court or Judge;

(10) To take cognizance, in the last instance, of controversies regarding expropriations made in the States to the detriment of aliens;

(11) To take cognizance of all controversies involving the contracts or agreements into which the government of the Confederation may enter with the States or private individuals; and in the last instance of all questions involving the provisions of treaties with foreign nations;

(12) To take cognizance of controversies relative to interoceanic communications through the territory of the Confederation and the security of transit therein;

(13) To take cognizance of all disputes relative to the property and revenue of the Confederation;

(14) To decide questions of competency arising between the Tribunals and Courts of the different States, or between the Tribunals and Courts of the Confederation and those of one or more States;

(15) To appoint and remove its subordinate officers and employees at will;

(16) To give all information requested by the President of the Confederation concerning matters within the Court's jurisdiction;

(17) To perform whatever other functions the law may require with regard to matters within the competency of the general government.

Article 50: The Supreme Court shall have power to suspend the

execution of State legislative acts which are contrary to the Constitution or laws of the Confederation, reporting such suspension to the Senate in order that that body may decide definitively upon the validity or nullity of said acts.

Article 51: The Supreme Court shall hear questions concerning the interpretation of national laws directed to it by Judges and Tribunals of the Confederation, and it shall forward to Congress its opinion as to how such questions should be resolved.

Article 52: In all cases in which the Constitution confers upon the Supreme Court the power to take cognizance of any matter, the law may grant cognizance in the first instance to District Courts or Judges, and, lacking these, to the Courts and Judges of the States. In such cases, the last instance shall always be before the Supreme Court.

Article 53: The Senate shall take cognizance of all cases involving the question of responsibility brought against the President of the Confederation or whoever is exercising that office, the Secretaries of State, the Attorney-General, and the Justices of the Supreme Court for malfeasance in office.

When such actions are brought for offenses not defined in the penal code, the accused may only be suspended or removed from office, provided the offense imputed to him is fully proved.

Article 54: In all cases in which the Senate takes cognizance of actions of responsibility it shall proceed by virtue of an accusation made by the House of Representatives or by the Attorney-General of the Nation.

SECTION 7

THE PUBLIC MINISTRY (MINISTERIO PÚBLICO)

Article 55: The Public Ministry shall be exercised by the House of Representatives through an official known as the Attorney-General of the Nation and through other officials designated by law.

TITLE V

RIGHTS OF INDIVIDUALS

Article 56: The Confederation recognizes to all inhabitants and transients:

(1) Individual security, which consists in not being imprisoned, arrested, or detained except by reason of acts determined by pre-existing law, nor judged by extraordinary commissions or courts;

(2) Individual liberty, which recognizes no other limits than the

liberty of another individual, that is to say, the right to do or refrain from doing that which, if done or omitted, does not according to law result in any damage to another individual or to the community;

(3) Property may not be taken except as a penalty or for a general levy in accordance with law, or when the taking is necessary for public necessity judicially declared and with previous indemnification;

In time of war indemnification does not have to be previously made and the necessity for expropriation may be declared by non-judicial authorities;

The provisions of this section, however, in no way authorize the penalty of confiscation;

(4) The freedom to express thoughts in print without any responsibility whatsoever;

(5) Freedom to travel in the territory of the Confederation and to leave the same without the necessity of a passport or the permission of any authority in time of peace, provided always that the judicial authority has not decreed otherwise. In time of war the government may require passports of individuals who wish to travel in places within the theater of military operations;

(6) The freedom to engage in any business or trade which does not infringe upon the business of a person to whom a property right in a useful invention has been temporarily guaranteed, or infringe upon those businesses reserved to the Confederation or States for revenue, and which does not obstruct communications or endanger health;

(7) Freedom to give and receive any kind of instruction in institutions not supported from public funds;

(8) Equality, by virtue of which all persons shall be tried in accordance with the same laws by Judges legally established and shall not be liable to exceptional contributions or services which include some and exempt others in the same class;

(9) Inviolability of domicile and correspondence, the former of which may not be entered, nor the latter intercepted or inspected, except by public authority for the reasons determined by law and in accordance with the formalities prescribed therein;

(10) The freedom of worship, whether public or private, in any religion whatsoever, but acts disturbing the public peace or those declared punishable according to a pre-existing law shall not be permitted;

(11) Freedom of unarmed association with such restrictions as the law may establish;

(12) The right to petition in writing any of the public corpora-

tions, authorities, or functionaries on any matter of general or particular interest.

Article 57: All Granadines, whether natives or inhabitants of one State, shall enjoy in the other States the same civil and political rights as the Granadines who are natives or inhabitants thereof and upon the same conditions.

Article 58: All aliens present in the territory of the Confederation as well as those who may come thereto shall enjoy the same civil rights and guarantees as nationals, provided always they submit to the laws and authorities of the country.

TITLE VI

ELECTIONS

Article 59: To be President of the Confederation one must be a native-born Granadine in the full exercise of the rights of citizenship.

Article 60: The President of the Confederation shall be elected by a direct vote of the citizens of the Confederation, the Senators and Representatives by a direct vote of the citizens of the respective States, the Justices of the Supreme Court by Congress from ternaries submitted by the State Legislatures, and the Attorney-General by the House of Representatives.

Article 61: The term of office for the President, Attorney-General, and Justices of the Supreme Court of the Confederation shall be four years reckoned from the first of April immediately following their election.

The term of office for Senators and Representatives shall be two years, and the law shall determine their time for assuming office.

Article 62: The President of the Confederation, his Secretaries of State, the Attorney-General, and Justices of the Supreme Court may not be elected Senators or Representatives.

Nor may Governors, supreme chiefs of the States, or military chiefs of the Confederation in actual service be chosen Senator or Representative in those States in which they exercise authority.

Article 63: The offices of all persons removable by the President of the Confederation shall become vacant upon their acceptance of the office of Senator or Representative.

TITLE VII

SUNDRY PROVISIONS

Article 64: No disbursement shall be made from the National Treasury of any sum not expressly voted by Congress.

Article 65: The salaries of the President of the Confederation, Senators, Representatives, Attorney-General of the Nation, and Justices of the Supreme Court may not be increased or diminished during the terms of those who may be in office at the time the increase or diminution is made.

Article 66: All public officers and corporations are prohibited from exercising any function or authority which has not been expressly conferred upon them.

Article 67: No law of the Confederation or of the States may devote the temples or buildings destined for public worship of any religion established in the country or the sacred vestments or vessels to any other use different from that which they now have, or subject them to any kind of contribution. The property and revenues for the support of churches and those belonging to religious corporations or communities shall enjoy the same guarantees as those of private individuals, and they may not be taken or taxed in any manner different from them.

Article 68: The property and revenue of public establishments of education, welfare, and charity may not be taxed with direct contributions either by the Confederation or by the States.

Article 69: Should Congress think proper to assign any district for the seat of government of the Confederation, the limits of that district shall be determined by law. In it shall be the capital of the Confederation, and the inhabitants of said capital and all the territory comprised within the limits of the district shall be exclusively governed according to the laws of the Confederation.

Article 70: By virtue of a law, other independent States may be admitted to the Confederation should they solicit admission through their respective governments and accept the terms of the present Constitution.

TITLE VIII

AMENDMENT

Article 71: This Constitution may be amended with the following formalities:

(1) The amendment must be requested by a majority of the State Legislatures; and

(2) The amendment must be debated and approved in each House in accordance with the procedure established for the enactment of legislation.

TITLE IX

TRANSITORY PROVISIONS

Article 72: Whatever may be necessary for the execution of this Constitution shall be provided for by law. All existing legislation in New Granada which is not contrary to this Constitution shall continue in force.

Article 73: The President, Vice-President, Senators, Representatives, Attorney-General, and the Justices of the Supreme Court of New Granada shall continue in office until the end of the terms for which they were elected.

Article 74: The Supreme Court of the Nation shall continue hearing and deciding those cases assigned to its jurisdiction by the law of June 27, 1857.

Article 75: This Constitution shall enter into force after it has been approved by the Legislative Power and the Executive Power; in the State of Cundinamarca, after its publication in the Official Gazette of the general government; and in the other States, fifteen days after it has been received in their respective capitals.

Article 76: The Constitution of May 21, 1853, the Additional Act of February 27, 1855, the Law of June 11, 1856, the Law of May 13, 1857, the Law of June 15, 1857, and all other laws of the general government or of the States which are contrary to this Constitution are hereby annulled.

Done in Bogotá on the 22nd of May 1858.

President of the Senate and Senator for the State
of Bolívar: T. C. DE MOSQUERA.

President of the House of Representatives and
Representative for the State of Cundinamarca:
JUAN ANTONIO MARROQUÍN.

Vice-President of the Senate and Senator for the State of
Cundinamarca: FRANCISCO CAICEDO.

Vice-President of the House of Representatives and Representative
for the State of Cauca: CARLOS HOLGUÍN.

Senators for the State of Antioquia: *Gregorio Gutiérrez González*, *José Joaquín Isaza*, and *Ricardo Villa*. Representatives for the State of Antioquia: *Eliseo Arbeláez*, *Arcensio Escobar*, *Remigio Martínez*, *José de la Cruz Restrepo*, and *Julián Vásquez*. Senators for the State of Bolívar: *Manuel José Anaya*, *Federico Brid*. Representatives for the State of Bolívar: *José María Amaris Pedrozo*, *Francisco Tomás Fernández*, *Enrique Grice*, *Joaquín Posada Gutiérrez*,

and *José Martín Tatis*. Senators for the State of Boyacá: *Antonio María Amézquita*, *Pedro Cortés*, and *Ignacio Vargas*. Representatives for the State of Boyacá: *Indalecio Barreto*, *Isidro Barreto*, *Antonio Bernal*, *Ramón Bohórquez*, *Glimaco Gómez*, *Ramón Gómez*, *José María Malo*, *Pioquinto Márquez*, and *José Segundo Peña*. Senators for the State of Cauca: *Antonio José Chaves*, *Carlos Martínez*, and *Miguel Quijano*. Representatives for the State of Cauca: *Ramón Argáez*, *Manuel María Castro*, *Cayetano Delgado*, *Eustaquio Urrutia*, and *Miguel Villota*. Senators for the State of Cundinamarca: *J. Uldarico Leiva* and *Rufino Vega*. Representatives for the State of Cundinamarca: *Luis Amay*, *José Joaquín Borda*, *Emigdio Briceño*, *Marcelo Buitrago*, *Miguel Calderón*, *Néstor Escobar*, *Cosme Gómez Mas*, *Pedro Gutiérrez Lee*, *Mariano G. Manrique*, *Gregorio Obregón*, *Joaquín Perdomo Cuenca*, and *Venancio Restrepo*. Senators for the State of Magdalena: *José María L. Herrera*, *Manuel Murillo*, and *M. A. Vengoechea*. Representatives for the State of Magdalena: *Pedro A. Lara*, and *M. Maya*. Senators for the State of Panamá: *Antonio Amador*, *Dionisio Facio*, and *Ildefonso Monteza*. Representatives for the State of Panamá: *Manuel Amador Guerrero*, *Gil Colunje*, and *Demetrio Porras*. Senators for the State of Santander: *Eustorgio Salgar* and *Francisco J. Zaldúa*. Representatives for the State of Santander: *Narciso Cadena*, *Eduardo Galvis*, *Cupertino Rueda*, *Antonio Vargas Vega*, *Germán Vargas*, and *José María Villamizar G.*

The Secretary of the Senate: *M. M. Medina*,

The Secretary of the House of Representatives: *Z. Silvestre*.

PACT OF UNION
OF THE
UNITED STATES OF COLOMBIA
(Constitution of 1861)

Constitution of 1861

HISTORICAL BACKGROUND

THE CONSTITUTION OF 1861 was a provisional "Pact of Union" entered into by "the sovereign and independent States" to provide a temporary basis of government until the country could be reorganized and an adequate constitution adopted. The revolt of 1860 had brought an end to the Constitution of 1858. The phraseology of the Pact of Union and the circumstances under which it was established are more suggestive of a treaty than a constitution. However, regardless of this, the pact was the legal basis of the union from September 20, 1861, to May 8, 1863, and for this reason it is here included as one of the constitutions of Colombia.

Dr. Mariano Ospina Rodríguez took office on April 1, 1857, for the presidential term 1857-1861. The Constitution of 1858 was adopted May 22. Article 73 of that constitution provided that regardless of the fact that a new constitution was entering into force, the President and members of Congress should "continue in office until the end of the terms for which they were elected." In short, the conservative President and the large conservative majorities in the two Houses of Congress were continued in office under the new Constitution of 1858.

During the remainder of 1858 peace and a reasonable measure of progress prevailed. Neither the liberals nor the conservatives did anything to irritate the other. By 1859, however, the conservatives, no doubt feeling secure in their congressional majorities, adopted legislation which fanned the old enmity into flame and revolt.

One of the acts provided for a rather drastic reduction of the standing Army. This not only gave offense to the Army, but also incited the liberals to anger, particularly the moderate liberals. For some years the Army had been casting its lot with the moderate liberals, who had come to look upon it as a most valuable adjunct in their competition with the conservatives for political power. Hence the liberals were opposed to any measures designed to reduce the Army's importance in the political scheme of things. A second measure along these same lines was one which increased national control of the State militias. In view of the spirit of localism then prevailing, it is obvious why such a law alarmed not only the liberals but also the local *caudillos*,

who were very jealous of their rights and prerogatives. The act passed by the conservative Congress which particularly inflamed the opposition, however, was one dealing with national elections. It is not necessary to the purposes of this discussion to elaborate the details of this act. Let it suffice to say that the law gave the national government great powers of intervention into the State election machinery with reference to the elections for President and members of Congress.

All of these acts were viewed by the liberals as measures taken by the conservatives to facilitate and assure their return to a position of dominance in Colombian politics. Several State Legislatures having liberal majorities passed resolutions declaring these acts unconstitutional and demanded that Congress repeal them.

The days of co-operation between liberals and conservatives were over. The truce was ended and the old fight renewed. Local fighting between the partisans of both groups broke out in several localities. The conservatives in the State of Santander revolted against the liberal government there and were defeated. The liberals under Juan José Nieto overthrew the conservative government in the State of Bolívar. President Ospina had to send national troops under General Alcántara Herrán to restore order. There was open rebellion and fighting in the States of Magdalena and Cauca.

Party agitation and strife had reached such proportions that in 1860 Congress passed a law for the preservation of the peace. This law made State officials criminally liable for breaches of peace in their States. The penalty prescribed was discharge from office and banishment from the country if they "ignored or disregarded the constitution or any of the laws of the Confederation, *or the orders of any of the peace officials, or the acts of any of the national authorities.*"¹ In short, this act made State officials agents of and removable by the national government. Such a law is clearly repugnant to any federal constitution such as that of 1858.

The governors of Bolívar, Cauca, Magdalena, and Santander considered this law directed at them. On May 8, 1860, General Mosquera, Governor of Cauca, decreed that because of the law the State of Cauca was seceding from the union. Bolívar, Magdalena, and Santander soon followed with similar proclamations of secession. These States then signed a pact of resistance to the national government and made Mosquera "Supreme Director of War." The rebels were victorious. Mosquera took Bogotá in July, 1861, and the Constitution of 1858 and its government came to an end.

¹ Henao and Arrubla, *op. cit.*, p. 479. Italics inserted.

Mosquera organized a provisional government which was to be in power until some definitive reorganization could be achieved and a new national constitution adopted. One of the very first acts taken by this government was a call directed to the civil and military leaders of each of the States to select a "plenipotentiary" to go to Bogotá to draw up a provisional basis of government. The Pact of Union, herein referred to as the Constitution of 1861, was the product of this meeting of plenipotentiaries.

Mosquera's government also issued another call to the States on August 25, 1861. The second call was for delegates to a constitutional convention to draw up a permanent constitution. This has come to be known in Colombian history as the famous Convention of Rionegro, which drew up the Constitution of 1863, to be discussed later.

The Congress of Plenipotentiaries met September 10, 1861. The "sovereign and independent States" of Bolívar, Boyacá, Cauca, Cundinamarca, Magdalena, Santander, and Tolima were represented. The constitution was adopted September 20, 1861.

POLITICAL ORGANIZATION

Never before in Colombian history had localism been more firmly established. The Constitution of 1861 reads very much like a treaty which in itself signifies intense localism. The phraseology employed offers further evidence. The document was not called a "constitution" but a "pact." The delegates were "Plenipotentiaries." They are individually named in the preamble as representatives of the several "sovereign and independent" States. They did not begin their labors until "after exchanging and finding in due form their full powers whereby they are invested by their respective governments with the power to proceed to the organization of a new political association."

The Constitution of 1861 had nothing to say relative to the organization of State governments. It did, however, prescribe certain limitations and obligations on those governments. There was the obligation to defend the "sovereignty of the Union or of any of the States" (Art. 2). Each State agreed to recognize as citizens of the union the citizens of the several States. National citizenship was therefore derivative (Art. 3). A Bill of Rights was included which both the national and state governments were obligated to respect (Art. 4[4]). When peace was disturbed, the Bill of Rights could be suspended by a council composed of the Attorney-General, Justices of the Supreme Court, and the Secretaries of State (Art 6).

The national government was one of delegated powers. It was obligated to recognize "the sovereignty, independence, and liberty of the States in all matters not expressly, specially, and clearly delegated to it by them" (Art. 4[1]).

Congress consisted of a "House of Representatives" and a "Senate of Plenipotentiaries." The House was elected according to population (Art. 18). There was equality of representation in the Senate. "The Senate of Plenipotentiaries shall represent the States as political entities of the Union, and it shall be composed of three Senators Plenipotentiary for each State" (Art. 19). The States determined the manner of choosing their Senators and Representatives (Art. 20). It should also be pointed out that the constitution is silent as to their tenure and qualifications.

For election of the President the Constitution of 1861 returned to the electoral system. This official was "chosen by Electors the number of whom shall be twice that of the number of Representatives and Senators Plenipotentiary in each State and in the Federal District" (Art. 22). Each State had "the right to determine the manner of choosing the Electors" (Art. 23). Congress canvassed the electoral vote cast in each State, but it had to be done "in accordance with the definitive laws enacted in the States" (Art. 24). The constitution is also silent as to tenure and qualifications for Electors.

President, Senators, and Representatives were the only national officers elected. The constitution prescribed the number of Senators, Representatives, and Electors to which a State was entitled, but left the manner of their election to the States. Qualifications for voting were also determined by the States. This is another indication of the extent to which localism had gone.

The Justices of the Supreme Court were selected by the Senate from ternaries submitted by the State Legislatures (Art. 25).

The Constitution of 1861 required that the general government make use of State officers for the enforcement of national laws within the States. "With the exception of finance officers, the general government may not have in the States any resident officials exercising jurisdiction or authority of a permanent nature other than State officers" (Art. 32).

Under the terms of the Constitution of 1861 the States not only participated effectively in the amending process, but they could also determine the constitutionality of national legislation. "The Executive shall suspend execution of those general laws which are claimed to be

contrary to this Pact or general Constitution by an absolute majority of the States acting through their respective Legislatures" (Art. 31).

The only participation the national Congress had in the amendment process was the obligation to call a constitutional convention, designated in this constitution as "a Congress of Plenipotentiaries," which is not to be confused with the "Senate of Plenipotentiaries." All States had to be represented in such a constituent congress, which was called "upon the petition of a majority of the States." As an added protection, it was provided that such a constituent congress could deal only "with matters determined by the Congress of the Union in the convocation decree" (Art. 45).

The outstanding characteristic of the government under the Constitution of 1861 was that in no preceding constitution, not even in that of 1811, had the members of the union had such complete control of their local government and administration. Never before had the members of the union played so effective a part in the national government. The national government had no effective participation in the amendment process. A majority of the State Legislatures could veto national legislation. The national government had to rely heavily upon State officers for the enforcement of national laws. The States were most important parts of the machinery for national elections.

A translation of the *Pact of Union of the United States of Colombia*, herein referred to as the Constitution of 1861, follows.

UNITED STATES OF COLOMBIA

PACT OF UNION

OF SEPTEMBER 20, 1861

Between the Sovereign States of Bolívar, Boyacá, Cauca, Cundinamarca, Magdalena, Santander, and Tolima.

The undersigned, *Antonio González Carazo*, Plenipotentiary for the Sovereign State of Bolívar; *Santos Acosta*, Plenipotentiary for the Sovereign State of Boyacá; *Manuel de Jesús Quijano*, Plenipotentiary for the Sovereign State of Cauca; *Francisco Javier Zaldúa*, Plenipotentiary for the Sovereign State of Cundinamarca; *Manuel Abello*, Plenipotentiary for the Sovereign State of Magdalena; *Januario Salgar*, Plenipotentiary for the Sovereign State of Santander; and *Antonio Mendoza*, Plenipotentiary for the Sovereign State of Tolima, having exchanged and found in due form their full powers whereby they are invested by their respective governments with the power to proceed to the organization of a new political association which shall assure for all time order, peace, liberty, and the consolidation of the federal system under whose auspices the States which the said plenipotentiaries represent wish to found a national state in accordance with the desire expressed in the Treaty of Cartagena of September 10, 1860, have agreed to the following

PACT OF UNION

Article 1: The sovereign and independent States of Bolívar, Boyacá, Cauca, Cundinamarca, Magdalena, Santander, and Tolima unite and confederate themselves forever and form a free, sovereign, and independent nation which shall be known as the United States of Colombia.

Article 2: The said States agree to assist and defend each other against all violence which threatens the sovereignty of the Union or of any of the States, or the liberties and rights which by this Pact are granted citizens of the Colombian Union.

Article 3: The States recognize as members and citizens of the United States of Colombia the citizens and members of each and every one of the States which compose or shall compose the Union, as well as those of the Federal District, which is considered in Article 42, as determined by their own institutions and laws, excepting, however, aliens who have not obtained letters of naturalization.

Article 4: The following are considered the invariable bases of union between the States:

(1) Recognition by the general government of the Union of the sovereignty, independence, and liberty of the States in all matters not expressly, specially, and clearly delegated to it by them;

(2) The general government of the Union and the governments of all the States shall be republican, popular, elective, representative, and responsible;

(3) The Deputies for the States to the Congress of the Union shall enjoy full immunity of person and property from the day on which the sessions begin or ought to begin, during the sessions, and during the journey to the sessions and the return to their homes.

(4) The recognition in the same manner as provided in Section 1 of the individual rights and guarantees of all inhabitants and transients, to wit: (1) freedom of religious worship, whether public or private, so long as it does not endanger public morals, safety, and order; (2) individual security; (3) individual liberty; (4) property; (5) freedom to express thoughts in print without any responsibility; (6) freedom to travel through the territory of the Union or leave it without the necessity of a passport or permission from any authority; (7) liberty of industry and labor; (8) freedom to give and receive any kind of instruction in institutions not supported by public funds; (9) immunity of domicile and inviolability of private correspondence; (10) equality of rights and duties; (11) freedom of unarmed association; (12) the right to petition in writing any of the public corporations, authorities, or functionaries on any matter of general or particular interest.

Article 5: The Constitution of the Colombian Union and those of each State shall determine the extent and prescribe the limits of the guarantees referred to in Section 4 of the preceding article in those matters within the competency of the respective governments.

Article 6: A council, composed of the Attorney-General of the Union, Justices of the Supreme Court of Justice, and the Secretaries of State of the general government may declare, upon evidence submitted by the Executive, that peace is disturbed in the United States of Colombia; and the Council may suspend any or all of the guarantees mentioned in Section 4 of Article 4 in those places within the theater of war. Such suspension shall continue until in the judgment of the Council peace is re-established.

Article 7: There shall be no slaves in the United States of Colombia.

Article 8: Aliens shall enjoy in the territory of the United States

of Colombia all liberties and exemptions granted to citizens so long as they obey the laws and authorities established in the country, and they shall pay the same contributions as are imposed on Colombians, whether such contributions are levied against the person, business, or property.

Article 9: Aliens may not in the future acquire immovable property in the territory of Colombia nor form corporations in any of the States without the express authorization of the State Legislature, or in the Federal District without the authority of the governing body prescribed in the law establishing said Federal District.

Article 10: In no State may there be enlistments or levies for the purpose of attacking the liberty or independence of another State or nation.

Article 11: The United States of Colombia recognize as their own debt the foreign and domestic debts recognized by the former governments of the Granadine Confederation and the United States of New Granada in proportion to the number of States which unite themselves under this Pact or which may unite with them later, and according to the population and wealth of said States; they further pledge their public faith for the amortization of said debts and the payment of interest.

Article 12: The United States of Colombia also recognize the credits arising out of loans, supplies, salaries, pensions, and indemnifications in connection with the present war as well as the expenses which were necessary for its termination and those necessary for the execution of this Pact. The public faith of the States is also pledged for the cancellation of said credits.

Article 13: The property, rights, and securities, the revenues and contributions which belonged by whatever title to the government of the late Granadine Confederation and later to the United States of New Granada belong from this day forward to the government of the United States of Colombia.

Article 14: In the event of a deficit in the Union Treasury for financing the matters referred to in Articles 11 and 12, the States pledge themselves to make up such deficit from their own revenues and properties in that proportion which may be fixed by the National Convention and future Congresses, and the same shall be done for deficits which occur in the general budget.

Article 15: The United States of Colombia agree to establish a general government to whose authority they submit themselves in those matters delegated to it by the present Pact. Said government shall be organized by the National Convention.

Article 16: The general government of the United States of Colombia shall be, because of the nature of its constitutive principles, republican, federal, elective, and responsible; and it shall be divided into Legislative Power, Executive Power, and Judicial Power.

Article 17: The Legislative Power shall be vested in two Houses known as the House of Representatives and the Senate of Plenipotentiaries.

Article 18: The House of Representatives shall represent the Colombian people and shall be composed of Representatives chosen in each State at the ratio of one for each fifty thousand persons, and one additional Representative for any remainder of at least twenty thousand.

Article 19: The Senate of Plenipotentiaries shall represent the States as political entities of the Union, and it shall be composed of three Senators Plenipotentiary for each State.

Article 20: The States shall determine the manner of choosing their Senators and Representatives.

Article 21: The House of Representatives and the Senate of Plenipotentiaries shall be known collectively as the Congress of the United States of Colombia.

Article 22: The Executive Power shall be vested in an officer known as the President of the United States of Colombia, who shall be chosen by Electors the number of whom shall be twice that of the number of Representatives and Senators Plenipotentiary in each State and in the Federal District.

Article 23: Each State shall have the right to determine the manner of choosing the Electors referred to in the preceding article, and the Federal District shall exercise this right in accordance with the law which establishes the district.

Article 24: Congress shall canvass the votes cast in the presidential elections in accordance with the definitive laws enacted in the States and Federal District.

Article 25: The Judicial Power shall be vested in a Supreme Court of Justice composed of three Justices. The election of the Justices shall be made by the Senate of Plenipotentiaries from ternaries submitted by the Legislative Assemblies of the States, and there shall not be at any one time more than one Justice who is a citizen, either native or resident, of the same State.

Article 26: There shall be an officer known as the National Attorney, who shall be the official defender of this Pact, the Constitu-

tion, and the laws of the Union. This official shall be chosen by the House of Representatives.

Article 27: The public forces of the Union shall be composed of those Colombians who voluntarily wish to serve therein. If in time of war this number is insufficient, the general government shall be able to request contingents from the States in proportion to their population; and the States shall be under the obligation to comply, leaving to the general government the responsibility for equipping, clothing, arming, and furnishing such troops and meeting all other expenses required by the service.

Article 28: The National Militia shall be organized by the States; but those parts of it in the service of the Union shall be governed entirely by the laws of the general government.

Article 29: Congress shall appoint the general officers of the service; the Executive, with the consent of the Senate of Plenipotentiaries, shall appoint those from the rank of Major to Colonel; and the Executive alone shall appoint those from the rank of Ensign to Captain.

Article 30: The government of the United States of Colombia may not declare or make war on any of the States or put down any disturbance in any without the express authorization of Congress and without having exhausted all means of conciliation which the national peace and public convenience demand.

Article 31: The Executive shall suspend execution of those general laws which are claimed to be contrary to this Pact or the general Constitution by an absolute majority of the States acting through their respective Legislatures.

Article 32: With the exception of finance officers, the general government may not have in the States any resident officials exercising jurisdiction or authority of a permanent nature other than State officers.

Article 33: It is prohibited to the governments of the Union and of the States to alienate to foreign powers any portion of the national territory, or to impede in time of peace commerce in arms and munitions.

Article 34: The States delegate to the general government to be organized by the Convention in accordance with the terms of this Pact all power relative to the following matters:

(1) Foreign relations with other nations, defense, the right to declare and make war, and the right to make peace;

(2) The right to organize, direct, and maintain an armed force in the service of the general government of the Union;

(3) The right to establish, organize, and administer the public credit and national revenues;

(4) The right to determine the size of the armed force in times of peace and war, and to determine the public expenditures to be made by the Treasury of the Union;

(5) The right to govern and administer foreign and coastwise commerce, forts, maritime ports, maritime and land frontiers, arsenals, dikes, and other public establishments and property belonging to the Colombian Union;

(6) The right to regulate interoceanic routes which already exist or which may be opened in the territory of the Union, and the navigation of rivers which run through more than one State or which pass to a contiguous country;

(7) The right to take a general census, to compile other statistics, and to make topographic and geographic maps of the people and territory of the United States of Colombia; to establish boundaries with contiguous countries; to adopt the flag and coat of arms of the Union; and to grant letters of naturalization to aliens;

(8) The right to decide questions and differences between the States provided the interested States are given a hearing; to determine the weight, form, type, and denomination of money; and to regulate official weights and measures;

(9) The right to pass laws, decrees, and resolutions both civil and penal with respect to those matters which are by the present Pact placed within the competency of the general government of the Union;

(10) All other rights and powers expressly conferred by this Pact.

Article 35: The general government also has the right to promote industry and public education without obstructing or impeding the rights enjoyed by the States and by individuals to promote the same things.

Article 36: The Congress of the Union by law may create new States out of existing ones provided always such is requested by the Legislature or Legislatures of the State or States concerned, and provided further that each of such new States has a population of at least 150,000.

Article 37: The States of Panamá and Antioquia shall be considered integral parts of the United States of Colombia provided this Pact is accepted by them through the action of their governments or

of plenipotentiaries named for that purpose; or the same may be accomplished by means of peace treaties entered into by the government of the Union and the said States.

Article 38: Independent peoples who wish to become a part of the Colombian Union may do so provided they accept and adhere to the stipulations of this Pact and have a population of not less than 150,000 persons and submit themselves to the institutions and authorities of the government of the Union.

Article 39: The general government of the Union shall have power to admit new States by means of public pacts, conventions, or treaties in which there shall be provision made for the determination of the amount of the State's public debt which is to be assumed by the government of the Union and the amount which is to remain a charge on the State.

Article 40: If the peoples seeking admission to the United States of Colombia are other than those who were a part of the former republic of the same name, the debt of such groups shall be determined in accordance with the terms of the treaties between the Republics of New Granada, Venezuela, and Ecuador, and calculated on the basis of the 1826 census.

Article 41: The United States of Colombia recognize as a sovereign and independent State and as an integral part of the Colombian Union the new State of Tolima formed from the former Provinces of Mariquita and Neiva by the Provisional Executive of the former United States of New Granada.

Article 42: The Government of the Union shall reside in a territory known as the Federal District, which shall be designated by Congress. Said district shall be organized and governed in the manner determined by the National Convention, and it shall be a part of no State.

Article 43: The Federal District shall be an integral part of the Colombian Union, and it shall have the right to send to the House of Representatives that number of Representatives to which its population entitles it when calculated in accordance with the provisions of Article 18.

Article 44: This Pact abrogates that signed in the city of Cartagena September 10, 1860, between the States of Bolívar and Cauca, in which the other States later joined.

Article 45: The present Pact may not be abolished, amended, interpreted, explained, or altered in any manner whatsoever except by a Congress of Plenipotentiaries in which all the States are repre-

sented and which may be called by the Congress of the Union upon the petition of a majority of the States. Such derogations, amendments, interpretations, explanations, and alterations may be made only in connection with matters especially determined by the Congress of the Union in the convocation decree.

Article 46: Inasmuch as the undersigned Plenipotentiaries are vested with full powers sufficient to accept the present Pact, they declare that they accept in the name of their respective States and governments each and every one of the stipulations agreed upon, and by this act they sanction, ratify, and make valid for always the present Pact of Union, league, and perpetual confederation between said States; consequently it shall go into effect from the day it is officially turned over to the provisional government of the Union.

Consequently the undersigned Plenipotentiaries, swearing before God the rectitude of their intentions in drafting the provisions of this Pact, sign it and seal it with the seals of their respective States in Bogotá, the capital of the Union, on the 20th day of September 1861.

The Plenipotentiary for the Sovereign State of Bolívar: *A. González Carazo*. The Plenipotentiary for the Sovereign State of Boyacá: *Santos Acosta*. The Plenipotentiary for the Sovereign State of Cauca: *Manuel de J. Quijano*. The Plenipotentiary for the Sovereign State of Cundinamarca: *Francisco J. Zaldúa*. The Plenipotentiary for the Sovereign State of Magdalena: *Manuel Abello*. The Plenipotentiary for the Sovereign State of Santander: *Januario Salgar*. The Plenipotentiary for the Sovereign State of Tolima: *Antonio Mendoza*.

CONSTITUTION
OF THE
UNITED STATES OF COLOMBIA
(Constitution of 1863)

Constitution of 1863

HISTORICAL BACKGROUND

GENERAL MOSQUERA's provisional government issued a call for a national constituent convention on August 25, 1861, but because fighting between the liberals and conservatives continued after Mosquera captured Bogotá in July, 1861, the convention could not assemble for some time. The last sizable conservative force was defeated October 25, 1862, in Antioquia. Conditions continued to be unsettled, however, and the Convention of Ríonegro did not begin its sessions until February 4, 1863. Naturally there were no conservative deputies in attendance. The liberals, completely successful in their revolution, intended to consolidate that victory by drawing up their own type of constitution.

The Constitution of 1858 was declared no longer in force. Since the convention did not wish Mosquera's dictatorship to continue any longer than was necessary, attention was immediately given to the formation of a provisional government to replace Mosquera until a new constitution and government could be established. On February 9, 1863, the convention adopted the "Law which provisionally organizes the Colombian Union."¹ By this law the convention appointed five Ministers of State to execute the laws and regulations passed by the convention. The convention was the government, and these Ministers of State attended to the executive work of that government.

It was soon evident that the convention was divided into two distinct groups: those favoring and those fearing General Mosquera. The latter were sufficiently strong to prevent Mosquera's election as president of the convention, which position was given to Dr. Francisco Javier Zaldúa.

After intense debates, the convention, on May 8, 1863, approved the constitution which was to continue in force until 1886. These twenty-three years proved to be years of stress and civil war. In 1885 the conservative elements and the moderate liberals, out of patience with the constantly disturbed conditions, united to throw off liberal control. Local jealousies had sapped the strength of the liberals until they were unequal to the task of governing.

After approving the constitution, the convention proceeded to the election of a President. Article 3 of the "Transitory Constitutional

¹ For text of this law, see Pombo and Guerra, *op. cit.*, II, 1115-1118.

Act," also adopted on May 8, 1863, provided that "the first President of the United States of Colombia shall be elected by the Convention, and he shall continue in office until April 1, 1864, on which date the President who is elected in accordance with Article 75 of the Constitution shall take office." General Mosquera was elected to serve for this short term.

POLITICAL ORGANIZATION

The Constitution of 1863 set up a federal form of government. "The Sovereign States of Antioquia, Bolívar, Boyacá, Cauca, Cundinamarca, Magdalena, Panamá, Santander, and Tolima" united to form the "United States of Colombia" (Art. 1). The national government had jurisdiction only over those matters "especially, clearly, and expressly delegated" to it; all other powers were "within the exclusive jurisdiction of the States" (Art. 16).

As was the case with the Constitution of 1861, that of 1863 had nothing to say concerning the structure of State governments other than that the States were required to "establish popular, elective, representative, and responsible governments" (Art. 8[1]).

The interstate obligations were those usually found in a federally organized government. There was a "full faith and credit" clause (Art. 9), a "privileges and immunities" clause (Art. 34), and an "interstate rendition" clause (Art. 10).

A most significant modification of the obligation to surrender fugitives from justice appears in the Constitution of 1863. In the Constitution of 1858 the States were obligated to surrender to the State from whence he had fled a fugitive charged with any kind of a crime. Article 10 of the Constitution of 1863 makes a similar provision. But Article 11 excludes fugitives guilty of the political crime of revolution. "Persons fleeing to a State after committing illegal acts *against the government of another State* must be sent to the interior and kept at such distance from the [State] frontier as will prevent further acts of hostility should such action be demanded of the asylum State by the government of the other State" (italics inserted). If the fugitive were charged with a common crime, the asylum State was under obligation to surrender him. If, however, as the constitution expresses it, he were charged with "having committed illegal acts against the government of another State," the asylum State was not under the obligation to surrender him. All that the asylum State was obligated to do was to see that he was kept at a safe distance from the border. The liberals of those days did not like anything which interfered too much

with the "right" of revolution.² If such a person could make good his escape into another State, he was not to be made liable to trial for his illegal acts. He was merely to be neutralized, so to speak. This constitutes one of the specific applications of the obligation upon the States "to observe the strictest neutrality in conflicts between the inhabitants and government of another State" (Art. 8[9]).

In so far as it was possible to achieve it by constitutional provisions, the liberals intended to make it as difficult as possible for the national government or the governments of other States to interfere in contests between the government and inhabitants of any given State. In addition to the obligation on the States to observe the strictest neutrality in such contests, it was also provided that the national government could not "make war on any of the States without the express authorization of Congress" (Art. 19). Such authorization therefore would have to be approved by both Houses of Congress. In this connection it should be kept in mind that there was equality of representation in the Senate, each State having three Senators. Moreover, it was left to the States to "determine the manner of choosing their Senators and Representatives" (Art. 40). It is difficult to reconcile all this with the provision that "the said States agree to assist and defend each other against all violence which threatens the sovereignty . . . of any of the States" (Art. 2). Is not a revolt against the government of a State "violence which threatens" whatever sovereignty a State has in a federal union?

New States could be created by national legislation "provided such is requested by the Legislature or Legislatures of the State or States concerned." An additional protection to State existence appears in the Constitution of 1863. It was provided that "the boundaries of the States . . . may not be altered or changed except with the consent of the States involved and the approval of the general government" (Art. 5).

In most of the earlier constitutions the central government was given the power to alter the boundaries of the territorial subdivisions of the country in any manner deemed conducive to administrative improvement. The second provision quoted in the paragraph immediately preceding was inserted in order to protect the States against the possibility of having boundaries redrawn, not only for the purpose of erecting new States, but also to prevent the national government from taking some territory from one State and giving it to a neighboring

² See Correa, *op. cit.*, p. 291.

State. The Constitution of 1863 is the first in which this form of protection is expressly provided.

Protection of the States from undue interference by the national government was further increased by several other provisions. Article 20 places upon State officers the burden of executing national laws within the various States. Moreover, certain national officers were "subject to inspection by State authorities."

The judiciary of the States was declared to be independent. "Cases begun in State courts in accordance with their special legislation, and concerning matters of exclusive state competence, shall be terminated in the same courts without being subjected to examination by any other outside authority" (Art. 21). On the other hand, the repugnancy of State acts to the national constitution and laws was determined by the national government. However, it required the unanimous decision of the Supreme Court to put the annulment procedure in train. Briefly, the provision was to the effect that the Supreme Court by unanimous vote could suspend the execution of State acts believed to be repugnant to the national constitution and laws. Then the Supreme Court reported the suspension to the Senate, which made the final decision as to repugnancy (Art. 72).

On the face of it, this does not appear to be unusual. It is normal to have the State judiciary supreme within its own sphere but subordinate to the national authorities in the determination of questions of repugnancy. However, the machinery provided for this situation in the Constitution of 1863 was such that it put the States in a much more favorable position than is the case, for example, in the Constitution of the United States of America. When read in the light of Article 72, Article 21 does not seem quite so redundant.

In the United States of America that agency of the national government having the power to declare State legislation unconstitutional is a body having a great measure of independence in relation to the national government and even greater independence in relation to the State governments. The fact that the Justices of the United States Supreme Court are appointed by national officials, have tenure during good behavior, are removable only by impeachment, and may decide cases by a simple majority make them, for all practical purposes, beholden to no one, least of all to the State governments.

Such a condition as this did not prevail under the Colombian Constitution of 1863. The States had very effective control over the Colombian Supreme Court. The Justices were elected by the State Legislatures (Art. 76). They were in office for a term of four years

(Art. 80). Hence re-election and continuance in office were at the will of the very bodies whose unconstitutional acts the Justices might be called upon to suspend. Article 70 provided that there were to be five Justices on the Supreme Court bench, no two of whom could be citizens of the same State. There were nine States in the union; hence four States were not directly represented on the court. To protect all nine State Legislatures, whether represented on the court or not, against any inconvenient interference in their legislation, the court was not given the power to declare State legislation unconstitutional. It had only the power to suspend legislation believed to be unconstitutional, and to do even this required a unanimous vote. The final decision was in the hands of the Senate, a body in which all of the States were equally represented.

Substantially the same machinery for declaring State legislation unconstitutional is to be found in the Constitution of 1858 (Art. 50). There was, however, one important variation. In the Constitution of 1858 Justices were chosen by Congress from ternaries submitted by the State Legislatures (Art. 60). In 1858 there were eight States in the union; therefore there were twenty-four nominations submitted for each place on the Supreme Court bench. From these twenty-four nominees Congress selected one for a position as Justice. Although the Justice selected owed his *nomination* to one of the State Legislatures, he was indebted to no State Legislature for his *election*. It was Congress which chose him rather than one of the other twenty-three nominees. The Constitution of 1863 made each Justice beholden to several State Legislatures for his *election*. Article 76 provided that "the Legislature of each State shall present to Congress a list of individuals equal to the number of vacancies to be filled, and Congress shall declare elected the five who have the largest number of votes" Under this arrangement Congress did not select the Justices; it merely counted votes.

Although the procedure for declaring State legislation unconstitutional was complicated and favored the State Legislatures, such was not the case with national legislation. "Any act of the National Congress or of the Executive of the United States [of Colombia] which . . . attacks the sovereignty of the States may be annulled by the vote of the States expressed by the majority of their respective Legislatures" (Art. 25). The Supreme Court had the duty "to declare what acts . . . have been annulled by a majority of the State Legislatures" (Art. 71[14]). This power to declare national acts null and void first appeared in Article 31 of the Constitution of 1861.

The amending process in the Constitution of 1863 is the most rigid to be found in any of the Colombian constitutions. That constitution could be amended in one of two ways, in each of which the States had a dominating influence (Art. 92). Amendments could be drawn up by Congress or by a constitutional convention. Before Congress could function in this capacity, the amendment had to "be requested by a majority of the State Legislatures." Before any congressionally drafted amendment could enter into force, it had to "be ratified by the *unanimous vote* of the Senate of Plenipotentiaries, *each State having one vote*" (italics inserted).

Amendments drafted by a constitutional convention did not require unanimity for *ratification*. In this instance the requirement of unanimity applied to the initiation of the process. Congress called a convention "at the request of *all the State Legislatures*" (italics inserted). Such conventions had to be "composed of an equal number of Deputies for each State."

Although the States had a good measure of autonomy and very effective means of guarding themselves against encroachment by the national government, the latter also had certain controls over State governments. The States were bound by the Constitution of 1863 "to refer all interstate controversies which cannot be settled peacefully to the general government and *accept its decision thereon . . .*" (Art. 8[8]; italics inserted). And the "right to decide questions and controversies between States provided the interested States are given a hearing" was delegated to the national government (Art. 17[11]). This power was exercised by the Supreme Court (Art. 71[6]). The power of the national government to declare State acts unconstitutional has already been discussed. In the matter of protecting themselves against invasion of their own spheres of action, however, the State governments were in a much more favorable position than the national government.

In preceding introductions the point has been repeatedly made that most of the liberal ideas appearing in the constitutions drawn up under the influence of that party were incorporated in the constitutions more for the advantage it gave them in their competition with the conservatives than for the promotion of liberalism per se. In this the Colombian liberals were not unique in the world of practical politics.

Federalism, as we have seen, was consistently supported because in Colombian politics of the nineteenth century the unitary form of government redounded to the benefit of the conservatives. Liberal power and influence were at their zenith when the Constitution of

1863 was adopted. Not only was a federal form of government set up, but it was a kind of federal form in which the autonomy of the States was more extensive than in any of the preceding Colombian constitutions or in the Constitution of the United States of America. One might almost say that the framers of this constitution went as far as they could in the matter of State autonomy and effectiveness without actually setting up a confederation.

The right to possess arms and munitions and to engage in that traffic was each time expanded in what may be called the liberal constitutions. In the Constitution of 1858 the States were forbidden "to impede traffic in arms and munitions" (Art. 11[4]). Nothing is expressly said about the right to possess these items. Article 33 of the Constitution of 1861 prohibited interference in this traffic by both the national government and the State governments, but still there was no mention of the right to possess. This right received its widest extension in the Constitution of 1863, which protected the "*freedom to possess arms and munitions and to engage in the commerce thereof in time of peace*" against violation by both the national government and the State governments (Art. 15[15]; italics inserted). The reasons for which the liberals advocated this freedom were discussed in the introduction to the Constitution of 1858.

Unlimited freedom of the press appeared for the first time in the Constitution of 1853. In the introduction to that constitution the reasons for unlimited freedom were set forth. Unlimited freedom of the press was provided for in every subsequent constitution through that of 1863. Freedom of expression, however, was unlimited only with regard to the press in the Constitutions of 1853, 1858, and 1861. In the Constitution of 1863 unlimited freedom of expression was extended to speech as well as to the press (Art. 15 [6] and [7]).

The liberals had always been opposed to the death penalty for political crimes because of the hazards it placed upon unsuccessful opposition. The death penalty for political as well as other kinds of crimes was eliminated in the Constitution of 1863 by the provision that "no one shall be condemned to corporal punishment for more than ten years" (Art. 15[2]).

To reduce still more the hazards of unsuccessful opposition, the liberals incorporated a new provision in the Constitution of 1863. Rebellion is a crime. One taken in rebellion is legally liable to much more severe punishment than is a prisoner of war under international law. Article 91 states that "the law of nations is part of the national legislation." Moreover, "The provisions of said law shall specially

prevail in cases of civil war. In consequence, such wars shall be terminated by treaties between the belligerents, who are to observe the humane practices of Christian and civilized nations." In short, rebels when taken were to be considered as prisoners of war rather than as rebels, and consequently legally entitled to the protection and immunities prescribed by international law for prisoners of war.

The hostile attitude of the liberals toward the Church grew out of this same desire to weaken conservative influence. The Church was more closely allied with the conservative elements of the country. Naturally the conservatives derived much benefit from this alliance. Inasmuch as the liberals were opposed to anything which gave the conservatives an advantage in the competition for power, they were opposed to the Church and in favor of religious freedom.

The first constitution to guarantee freedom of religion was that of 1853. It has appeared in every constitution since then. However, the strongest anti-Catholic Church provisions in the entire history of Colombia are to be found in the Constitution of 1863. The liberals were not satisfied with relying exclusively on the rivalry of non-Catholic sects as a means for weakening the influence of that church. They attacked the Church more directly. Some of the provisions were designed to reduce its wealth; others to control its activities.

The States agreed "to establish in their Constitutions and civil legislation the principle that religious communities, corporations, associations, and entities shall be incapable of acquiring real property" (Art. 6). To forestall any future government aid or assistance, it was provided that "no contributions shall be imposed for the maintenance of religious cults established or which may be hereafter established in the United States [of Colombia]. Every cult shall be maintained by the voluntary contributions of its members" (Art. 23).

There were other provisions regulating the transmission of real property which, although generally applicable, bore most heavily upon the Church because of the economic conditions prevailing. Article 7 provided that "the said States likewise agree to prohibit in perpetuity foundations, legacies, trusts, and such arrangements which attempt to draw real property from free circulation." The provision goes on to say the States agree that "henceforth no perpetual annuity can be established . . . on landed property." Such provisions were intended to deprive the Church of the opportunity of acquiring wealth.

The provision which granted power to control the activities of the Church stated that "in order to maintain the national sovereignty and preserve the public peace and security, the National Government

and the governments of the States, as the case may be, shall exercise the right of supreme inspection over religious worship in the manner prescribed by law" (Art. 23).

Although the Catholic Church is not specifically mentioned in the provisions discussed above, it is obvious that they were directed at that Church. For all practical purposes, Protestant denominations were nonexistent in Colombia at that time.

Before leaving the topic of religion, brief mention should be made of the fact that every Colombian constitution, except those of 1861 and 1863, was drawn up "in the Name of God." The failure of the liberals to record dependence upon divine leadership in their constituent labors of 1861 and 1863 furnished the conservatives with a rallying cry of deep emotional content. They made much of this in the contest which followed the adoption of the Constitution of 1863.

The Constitution of 1863 contains no important innovations in the organization of the national government. Some changes, however, were made in the method of selecting national officers. Under the terms of the Constitution of 1861 the President was chosen by a majority of Electors. Each State had that number of Electors which was twice the number of Representatives and Senators from that State. Under this system the more populous States had a greater voice in the election. To make the States more nearly equal, the Constitution of 1863 provided that "the election of the President of the Union is to be made by the vote of the States, each State having one vote, which shall be that of the relative majority of their respective Electors. . . ." The candidate receiving "an absolute majority of the votes of the States" was elected. Such a procedure as this increased the importance of the more sparsely populated States, and to that extent increased their independence.

Nothing new appears concerning the election of Senators and Representatives. The changes made in the election of Justices of the Supreme Court have been discussed above.

Unlike the Constitution of 1861, that of 1863 does define national citizenship (Art. 31), and also sets forth the qualifications for national office. "All male Colombians twenty-one years of age, or who are or have been married, excepting ministers of any religion whatsoever, are eligible for the public offices of the general government of the United States" (Art. 33). Notice should be taken of three things in this provision. It was not required that the President be a native-born Colombian. Clergymen were barred from national office. Finally there are no property, income, and literacy qualifications.

The Constitution of 1863 represents the pinnacle of achievement for the liberals. Extreme localism seemed securely established in the fundamental law. The powers of the President, the national government, the Catholic Church, and all the other sources of conservative power were, it was thought, so completely weakened and circumscribed that the conservatives would never again be able to regain any influence in Colombian politics. This proved to be a false dream. With the adoption of the Constitution of 1863 there was ushered in a period of great political confusion and civil war culminating in the return of the conservatives to power.

A translation of the text of the *Constitution of the United States of Colombia*, herein referred to as the Constitution of 1863, follows.

CONSTITUTION
OF THE
UNITED STATES OF COLOMBIA

The National Convention

In the name and by authority of the People of the United Colombian States which it represents, decrees the following

CONSTITUTION

TITLE I

THE NATION

Article 1: The Sovereign States of Antioquia, Bolívar, Boyacá, Cauca, Cundinamarca, Magdalena, Panamá, Santander, and Tolima, created respectively by the acts of February 27, 1855, June 11, 1856, May 13, 1857, June 15 of the same year, April 12, 1861, and September 3 of the same year, unite and confederate in perpetuity for the promotion of their external security and mutual welfare, and to form a free, sovereign, and independent nation under the name of the "United States of Colombia."

Article 2: The said States agree to assist and defend each other against all violence which threatens the sovereignty of the Union or of any of the States.

Article 3: The boundaries of the territory of the United States of Colombia are the same as those which in 1810 separated the territory of the Viceroyalty of New Granada from that of the Captaincies-General of Venezuela and Guatemala and that of the Portuguese possessions in Brazil; the southern boundary is that provisionally designated in the treaty of July 9, 1856, with Ecuador as well as the others with that republic and Perú.

Article 4: Sovereign States erected out of any one or more of the existing States in accordance with the following article, as well as totally independent States which may wish to be admitted to the Union by treaties duly entered into, shall also be a part of the nation.

Article 5: The creation of new States by dividing the population and territory of existing ones may be done by federal law provided such is requested by the Legislature or Legislatures of the State or States concerned, provided always that each of such new States shall have at least 100,000 inhabitants and that those States out of which new ones

are erected shall continue to have at least 150,000 inhabitants.

The boundaries of the States recognized in Article 1 may not be altered or changed except with the consent of the States involved and the approval of the general government.

TITLE II

BASES OF UNION

SECTION I

RIGHTS AND DUTIES OF STATES

Article 6: The States agree to establish in their Constitutions and civil legislation the principle that religious communities, corporations, associations, and entities shall be incapable of acquiring real property; and to establish as a general principle that real property shall be alienable and divisible at the exclusive will of the owner and transmissible to heirs in accordance with ordinary law.

Article 7: The said States likewise agree to prohibit in perpetuity foundations, legacies, trusts, and such arrangements which attempt to draw real property from free circulation.

They likewise agree and declare that henceforth no perpetual annuity can be established otherwise than on the public treasury, and by no means on landed property.

Article 8: In the interest of national integrity, advancement of the Union, and peaceful relations between the States, the latter agree:

(1) To establish popular, elective, representative, and responsible governments;

(2) To alienate no part of their territory to a foreign power;

(3) To establish no duties or other charges on navigation of rivers and other waterways which have not been improved by artificial canalization;

(4) To impose no taxes on goods which are the object of national taxation before such goods have been offered for sale, even when they may have been declared free of import duties; nor upon goods destined for exportation which are permitted to leave the country duty-free by the national government;

(5) To exact no charges on goods passing through the State;

(6) To impose no duties on any of their citizens who are in the employ of the national government if such duties are incompatible with national public service;

(7) To levy no tax on the properties and effects of the Colombian Union;

(8) To refer all interstate controversies which cannot be settled peacefully to the general government and accept its decision thereon; under no circumstances may a State declare or make war upon another;

(9) To observe the strictest neutrality in conflicts between the inhabitants and government of another State.

Article 9: The authorities of each State have the duty to execute and cause to be executed the Constitution and laws of the Union, the decrees and orders of the President thereof, and the decisions and sentences of the national Tribunals and Courts.

In each of the States full faith and credit shall be given to the records, acts, and judicial sentences and proceedings of the other States.

Article 10: It is obligatory upon the authorities of each State to surrender to the authorities of another State all persons who have been charged with crime in the latter State and against whom has been issued an arrest warrant which is not repugnant to the individual rights enumerated in Article 15. Such warrant of arrest must be accompanied by all necessary documents.

Article 11: Persons fleeing to a State after committing illegal acts against the government of another State must be sent to the interior and kept at such distance from the frontier as will prevent further acts of hostility should such action be demanded of the asylum State by the government of the other State.

Article 12: There shall be no slaves in the United States of Colombia.

Article 13: In no State may there be made enlistments or levies for the purpose of attacking the liberty or independence of another State or nation or for disturbing its public order.

Article 14: The legislative acts of the State Assemblies which obviously transcend their sphere of constitutional action are subject to suspension and annulment as provided in this Constitution; but responsibility shall never attach to a State when such acts have not been executed and have not accomplished their intended effect.

SECTION 2

GUARANTEE OF INDIVIDUAL RIGHTS

Article 15: The recognition and guarantee by the general government and by the governments of each and every one of the States of the individual rights which belong to the inhabitants and transients in the United States of Colombia are the essential and invariable basis of union. These rights are:

(1) The inviolability of human life, by virtue of which the general

government and the governments of the States agree not to decree the death penalty in their laws;

(2) No one shall be condemned to corporal punishment for more than ten years;

(3) Individual liberty is no greater than the liberty of another individual, that is to say, the right to do or refrain from doing that which, if done or omitted, does not result in any damage to another individual or to the community;

(4) Personal security may in no manner be attacked with impunity by another individual or by any public authority; no one may be arrested or detained except for criminal reasons or for the purpose of correctional penalty; nor may anyone be judged by extraordinary commissions or tribunals; nor may anyone be penalized without being heard and sentenced by a court for violation of pre-existing law;

(5) Property may not be taken except as a penalty, or for a general levy in accordance with law, or when such taking is demanded by some grave consideration of public necessity judicially declared and with prior indemnification.

In time of war indemnification does not have to be previously made, and the necessity for expropriation may be declared by the authorities without a judicial order.

But the provisions of this paragraph in no way authorize confiscation;

(6) There shall be absolute freedom of the press and freedom to circulate foreign and domestic printed matter;

(7) There shall be freedom to express thoughts by speech or writing without any limitation whatsoever;

(8) There shall be freedom to travel in the territory of the United States and to leave the same without the necessity for a passport or the permission of any authority in time of peace, provided always that the judicial authority has not decreed the contrary.

In time of war the government may require passports of individuals who travel in places within the theater of military operations;

(9) There shall be freedom to engage in any business or trade which does not infringe upon the business of a person to whom a property right in a useful invention has been temporarily guaranteed by law, or which does not infringe upon those businesses reserved to the Union or to the States for revenue; and which does not obstruct communications or endanger health and security;

(10) There shall be equality; therefore it is illegal to grant privileges or distinctions which are exclusively favors or benefits; nor may

special obligations be imposed which reduce those subject thereto to a condition inferior to that of others;

(11) There shall be freedom to give and receive any kind of instruction in institutions not supported by public funds;

(12) Everyone shall have the right to prompt consideration of written petitions directed to public corporations, authorities, or functionaries concerning any matter of general or particular interest;

(13) The domicile and private papers shall be inviolable; hence the home may not be entered, nor may written matter be intercepted or inspected except by competent authorities and for the purposes and according to the formalities determined by law;

(14) There shall be freedom of unarmed association;

(15) There shall be freedom to possess arms and munitions and to engage in the commerce thereof in time of peace;

(16) There shall be freedom of religious worship whether public or private so long as the exercise thereof does not involve acts which are incompatible with the national sovereignty or which disturb the peace.

SECTION 3

DELEGATION OF FUNCTIONS

Article 16: All matters of government which have not been especially, clearly, and expressly delegated to the general government by the States are within the exclusive jurisdiction of the States.

Article 17: The United States of Colombia agree to establish a general government which shall be popular, elective, representative, and responsible, and to whose authority they submit the following matters:

(1) Foreign relations, defense, and the right to declare and make war and make peace;

(2) The organization and maintenance of a public force in the service of the general government;

(3) The establishment, organization, and administration of public credit and national revenues;

(4) The determination of the size of the standing army in time of peace and war; and the determination of public expenditures to be made by the Treasury of the Union;

(5) The regulation and administration of foreign commerce, pilotage, and coastal trade; of the forts, maritime ports, maritime and land frontiers; arsenals, dikes, and other public establishments and the property of the Union;

(6) The regulation of interoceanic routes which already exist or may be opened in the territory of the Union, and the navigation of rivers which run through more than one State or which flow into a contiguous country;

(7) The taking of the general census;

(8) The establishment of boundaries with contiguous countries;

(9) The adoption of a national flag and coat of arms;

(10) The exclusive regulation of the naturalization of aliens;

(11) The right to decide questions and controversies between States, provided the interested States are given a hearing;

(12) The coinage of money and the determination of its weight, form, type, and denomination;

(13) The regulation of official weights and measures;

(14) The passage of legislation and the establishment of judicial procedures in cases of prize, reprisal, piracy, and other crimes and, in general, those acts committed on the high seas which by international law come within the jurisdiction of the nation;

(15) The passage of judicial and penal legislation to deal with violations of international law;

(16) The power to pass laws, decrees, and resolutions, both civil and penal, with respect to those matters which, by this article and the following one, are within the competency of the general government.

Article 18: The general government shall have concurrent jurisdiction in the following matters:

(1) The promotion of public education;

(2) The postal service;

(3) Statistics and the geographical or topographical maps or charts of the towns and territories of the United States;

(4) The civilization of the Indians.

SECTION 4

GENERAL PROVISIONS

Article 19: The government of the United States shall not be able to declare or make war on any of the States without the express authorization of Congress and without having previously exhausted all the peaceful means which the national order and public convenience demand.

Article 20: With the exception of the National Congress, the Federal Supreme Court, and the Executive Power of the Nation, there shall be no federal officers having ordinary jurisdiction or authority in any of the States in time of peace.

The agents of the government of the Union who are charged with fiscal, military, or any other matters shall ordinarily exercise their functions subject to inspection by State authorities having to do with the same matters.

The said authorities are likewise federal authorities in all matters requiring command and jurisdiction, and they must therefore fulfil under strict responsibility to be exacted of them by the high federal powers according to this Constitution and the laws, the duties imposed upon them by the said authorities according to their powers.

Article 21: The Judicial Power of the States is independent. Cases begun in State Courts in accordance with their special legislation, and concerning matters of exclusive state competence shall be terminated in the same courts without being subjected to examination by any other outside authority.

The indemnifications which the Union may grant for acts committed by the functionaries of the States in violation of the civil rights guaranteed by Article 15 shall be charged to the respective State, which shall be responsible to the Federal Treasury for the pecuniary amount of the indemnity granted.

Article 22: The members of the State Legislatures shall enjoy immunity during the period that their respective Constitutions may determine, and they shall at no time be responsible for the votes or opinions that they may give in the exercise of their functions.

Article 23: In order to maintain the national sovereignty and preserve the public peace and security, the National Government and the governments of the States, as the case may be, shall exercise the right of supreme inspection over religious worship in the manner prescribed law.

No contributions shall be imposed for the maintenance of religious cults which are now established or which may be hereafter established in the United States. Every cult shall be maintained by the voluntary contributions of its members.

Article 24: No legislative enactment of the general government or of the governments of the States shall have a retroactive effect, excepting in penal matters when an *ex post facto* law imposes a lesser penalty.

Article 25: Any act of the National Congress or of the Executive Power of the United States which violates the civil rights guaranteed by Article 15 or attacks the sovereignty of the States may be annulled by the vote of the States expressed by the majority of their respective legislatures.

Article 26: The public force of the United States is divided into naval and land forces under the jurisdiction of the Union, and it shall likewise include the national militia, which the States may organize according to their own laws.

The forces of the Union shall consist of volunteers, or of a contingent to be proportionately given by each State calling out those citizens liable to serve according to the laws of the State.

In case of war the contingent may be augmented by bodies of the national militia up to the number of men necessary for completing the force required by the general government.

Article 27: The general government cannot change the commanders of the corps furnished by the States excepting in the cases and with the formalities established by law.

TITLE III

PROPERTY AND OBLIGATIONS OF THE UNION

Article 28: The United States of Colombia acknowledge the domestic and foreign debts recognized by the governments of the former Granadine Confederation and of the United States of New Granada in the proportion corresponding to the population and wealth of the States which unite under the present Constitution or that may hereafter join the Union. The States solemnly pledge their public faith for the amortization of said debts and the payment of interest thereon.

Article 29: The United States of Colombia also acknowledge the credits arising from internal loans, supplies, salaries, pensions, and indemnities, and the expenses which the maintenance of this Constitution may require. The public faith of the States is pledged for the discharge of those credits.

Article 30: The property, rights and securities, the revenues and contributions which belonged by whatever title to the government of the late Granadine Confederation and later to the United States of New Granada belong to the government of the United States of Colombia with such alterations as have been made or shall hereafter be made by special legislative enactments.

The uncultivated land of the nation hypothecated for the payment of the public debt may not be applied to any other purpose, except that such land may be granted to new settlers or given as compensation and aid to undertakings for opening up new means of communication.

TITLE IV

COLOMBIANS AND ALIENS

Article 31: The following are Colombians:

(1) All persons born or who may be born in the territory of the United States of Colombia although their parents may be aliens temporarily in the country, provided such persons return and settle therein;

(2) Children of a Colombian father or mother who may or may not have been born in the territory of the United States of Colombia, provided that in the latter case they return and establish a domicile therein;

(3) Aliens who have obtained letters of naturalization;

(4) Persons born in any of the Hispanic-American Republics who have established a residence in the territory of the Union and who have declared before competent authority that they wish to be Colombians.

Article 32: Persons who establish their domicile in and acquire the nationality of a foreign country lose their Colombian citizenship.

Article 33: All male Colombians twenty-one years of age, or who are or have been married, excepting ministers of any religion whatsoever, are eligible for the public offices of the general government of the United States.

Article 34: It is the duty of all Colombians to serve the Nation in the manner prescribed by law, sacrificing life itself if necessary in the defense of national independence. In the territory of whatever State they may be, they shall be subject to the same duties and enjoy the same rights as those who are domiciled therein.

Article 35: A special law shall define the status of resident aliens, and it shall determine the rights and duties appertaining thereto.

TITLE V

THE GENERAL GOVERNMENT

Article 36: The general government of the United States of Colombia, in accordance with the nature of its constitutional principles, shall be republican, federal, elective, and responsible; it shall be divided into Legislative Power, Executive Power, and Judicial Power.

TITLE VI

THE LEGISLATIVE POWER

SECTION I

GENERAL PROVISIONS

Article 37: The Legislative Power shall reside in two Houses known as the House of Representatives and the Senate of Plenipotentiaries.

Article 38: The House of Representatives shall represent the Colombian people, and it shall be composed of members elected in each State upon the basis of the population thereof calculated at the ratio of one Representative for each fifty thousand inhabitants and an additional Representative for any remainder amounting to not less than twenty thousand.

Article 39: The Senate of Plenipotentiaries shall represent the States as political entities of the Union and shall be composed of three Senators Plenipotentiary for each State.

Article 40: The States shall determine the manner of choosing their Senators and Representatives.

Article 41: Congress shall meet in ordinary session without the necessity of a convocation each year on the first of February in the capital of the Union.

It may likewise meet at any other place, or hold its sessions temporarily elsewhere, and extend the same when for some grave reason Congress may so decide.

The mutual consent of both Houses is required to transfer their sessions temporarily to another place or to suspend the sessions for more than two days.

The ordinary sessions shall last ninety days.

Article 42: Congress shall meet in extraordinary session by agreement of both Houses or when called by the Executive.

Article 43: In order that Congress may open and continue its sessions, an absolute majority of the members of each House must be in attendance. One of the Houses cannot open its sessions on a different day from the other, or continue the same while the other is in recess.

Article 44: Senators and Representatives enjoy immunity of person and property from the day on which the sessions open or should open, during the sessions, and during their journey from and return home.

For the purposes of this article, the law shall fix the time necessary for such journeys.

Article 45: Senators and Representatives are not responsible for the votes and opinions they express.

No authority can at any time bring them to account for their votes and opinions under any pretext whatsoever.

Article 46: Senators and Representatives may not accept any office to which the President of the Colombian Union may freely appoint except those of Secretary of State, Diplomatic Agent, and Military Chief in time of war.

Acceptance of such appointments vacates the congressional seat.

Article 47: Senators and Representatives while in office may not make in their own name or through another person any kind of contract with the general government.

Neither may they accept from any government, company, or person power to act in matters having any relation to the government of the Colombian Union.

SECTION 2

THE CONGRESS

Article 48: The House of Representatives and the Senate of Plenipotentiaries shall be known collectively as the Congress of the United States of Colombia.

Article 49: The following are the exclusive powers of Congress:

- (1) To approve annually the sums to be taken from the Treasury of the Union for national expenses;
- (2) To decree the sale of the property of the Union and its application to public uses;
- (3) To fix annually the strength of the naval and land forces in the service of the Union;
- (4) To permit the transit of foreign troops through the territory of the Union;
- (5) To authorize the President of the Union to declare war on another nation;
- (6) To authorize the Executive to permit foreign warships to remain in the ports of the Republic;
- (7) To grant amnesties and general or individual pardons for any grave reason of national expediency;
- (8) To grant privileges and assistance for steam navigation of such rivers or other waters which may serve as a channel of commerce for more than one State or which flow to a neighboring country;
- (9) To designate the capital of the Colombian Union;
- (10) To canvass in joint session ballots cast for the President of

the United States and for Justices of the Federal Supreme Court, and to declare who is elected and communicate the same to him;

(11) To choose annually by an absolute majority and in joint session three Presidential Alternates (*Designados*) to exercise the Executive Power of the Union and five Alternate Justices of the Supreme Court, determining the order in which such Alternates are to replace the principals in case of permanent or temporary vacancy;

(12) To decide upon such public treaties and conventions as the President of the Union may enter into with other nations, and upon the contracts he may make with the States or with private persons whether native or alien which he is obligated to submit to its consideration;

(13) To create all offices required for the public service and to determine the necessary qualifications, salary, and functions;

(14) To demand of the Executive an account of all actions taken and such verbal and written reports as may be required for the better dispatch of congressional business;

(15) To designate from among the general officers of the Republic as many as eight who may be eligible from among whom the Executive shall appoint the Commander-in-Chief of the Army as provided by law; he may be removed by the House of Representatives whenever the House deems it expedient;

(16) To legislate on all matters within the competency of the general government.

Article 50: Neither the Congress nor the Houses separately may delegate any of their powers.

SECTION 3

THE SENATE

Article 51: The following are the powers of the Senate:

(1) To confirm the nominations made by the Executive for Secretaries of State, also of the superior officers in the various administrative departments, Diplomatic Agents, and Military Chiefs;

(2) To approve instructions given by the Executive to Diplomatic Agents relative to public treaties;

(3) To decree the suspension of the President of the United States and of the Secretaries of State and to place them at the disposal of the Federal Supreme Court by virtue of an accusation made by the House of Representatives or by the Attorney-General should there be grounds for proceeding against these officials for ordinary offenses;

(4) To take cognizance of actions of responsibility against the

President of the United States, the Secretaries of State, Justices of the Federal Supreme Court, and the Attorney-General of the Nation on accusation by the House of Representatives for crimes committed in the performance of their functions;

(5) To decide definitively upon the nullity or validity of the legislative acts of the State Assemblies which may be denounced as contrary to the Constitution of the Republic.

Article 52: During the recess of the Senate when the good of the service may require it the Executive may appoint Secretaries of State, Diplomatic Agents, and superior officers of the administrative departments provided he shall submit such appointments for approval to the Senate at its next meeting.

SECTION 4

THE HOUSE OF REPRESENTATIVES

Article 53: The following are the powers of the House of Representatives:

(1) To examine and close definitively the general account of the National Treasury;

(2) To accuse before the Senate the President of the United States, Secretaries of State, Justices of the Federal Supreme Court, and the Attorney-General of the Nation in those cases and for those reasons provided in subsections 3 and 4 of Article 51;

(3) To see that all public functionaries and officers in the service of the United States discharge their duties, and to require the proper officer of the Public Ministry to institute the necessary accusation against all who may incur responsibility;

(4) Annually to choose by an absolute majority the Attorney-General and two Alternates (*Suplentes*).

SECTION 5

CONCERNING THE ENACTMENT OF LAWS

Article 54: In the Senate and House of Representatives all bills proposed by the members of either House or by the committees of the same may be presented for debate except such as may impose contributions or relate to the organization of the Public Ministry, which bills must always originate in the House of Representatives.

Article 55: No bill shall become law until it shall have gone through three readings in each House on three separate days, nor shall any bill become law without having been approved by an absolute majority of the members present at the respective sittings.

Article 56: Besides the approval of the Houses, every bill requires the sanction of the President of the Union, who has the right to return it to the House of origin, along with his objections, for reconsideration.

Article 57: Should a bill be returned as unconstitutional or altogether inexpedient and one of the Houses declare the objections made by the President to be well founded, the bill shall be tabled and may not be reconsidered during that session.

If both Houses declare the President's objections to be ill-founded, the bill shall be returned to the President of the Union, who, in such case, cannot withhold his sanction.

Article 58: If the President's objections apply to only one or several of the provisions of the bill and both Houses declare the objections to be well founded wholly or in part, then the bill shall be reconsidered and the necessary modifications of that portion or portions to which the objections refer shall be made.

Should the modifications adopted be in accord with the proposals made by the President of the Union, he may not withhold his sanction; but if they are not so, or if any new provisions are incorporated, or if any are deleted which were not objected to, the President may make new objections to the bill.

Should one of the Houses declare the objections to be ill-founded and the other House declare the contrary, the bill shall be tabled.

In all cases in which both Houses declare the objections to be ill-founded it is the duty of the President to sanction the bill.

When on considering the objections submitted by the President, new provisions are incorporated, they need go through only two readings on different days in each House.

Article 59: The President of the Union is allowed six days in which to return any bill with his objections if the bill consists of not more than fifty articles; if it contains more than that number, the period of time shall be ten days.

Every bill not returned within the time specified must be sanctioned; but if Congress should go into recess during the period allowed the President for returning the bill, he must either sanction or object to it within the ten days immediately following that on which Congress went into recess and, moreover, he must publish the result through the medium of the press.

Article 60: Every bill which remains pending when the Houses recess shall be considered as a new bill when discussed in the following session.

Article 61: In all laws and legislative decrees the following formula shall be used: "The Congress of the United States of Colombia decrees—"

SECTION 6

PROVISIONS COMMON TO BOTH HOUSES

Article 62: Each House has the exclusive power of appointing its own officers and of making the regulations it may think fit for the direction and performance of its functions and for the policing of the building in which its meetings are held. In these regulations correctional penalties may be established for any transgressions committed by members, and for offenses by other individuals against the House or against the immunities of its members.

Article 63: Each House is competent to decide questions concerning the qualifications of its members when from any State a greater number of Senators or Representatives present themselves than that State is entitled to and all are provided with credentials in due form.

TITLE VII

THE EXECUTIVE POWER

Article 64: The Executive Power of the Union shall be exercised by an officer known as the President of the United States of Colombia who shall take office on the first of April immediately following election.

Article 65: In case of permanent or temporary incapacity of the President of the Union, this title shall be assumed and the Executive Power exercised by one of the three Presidential Alternates (*Designados*) who are chosen each year by an absolute majority of Congress, which also determines their order of succession.

If for any reason Congress should not have elected the said Presidential Alternates, or if none of them should be in the capital of the Union or for any other reason none is able to take charge of the Executive Power, then the Attorney-General shall temporarily assume the office and, in his default, one of the popularly elected Presidents, Governors, or superior officers of the States in the order of substitution determined each year by Congress.

The law shall determine when a new election for President is to take place in cases of permanent vacancy in that office.

The term for the exercise of Executive Power by the Presidential Alternates shall be one year reckoned from the first of April following election.

If the meeting of Congress cannot take place at the time appointed, or should the election of Presidential Alternates have been neglected, their term of office shall continue until such meeting shall take place and a new selection be made.

Article 66: The following are the powers of the President of the Union:

(1) To take measures necessary for the complete execution of the laws;

(2) To see that the national revenues are properly and faithfully collected;

(3) To negotiate and conclude public treaties and conventions with foreign nations, to ratify them and exchange ratifications with the consent of Congress, and to see to their due observance;

(4) To enter into all kinds of agreements or contracts relating to matters within the competence of the government of the Union, submitting them to Congress for approval in order that they may be carried into effect, except those containing stipulations already sanctioned by law;

(5) To declare war when it has been decided by Congress and to direct the defense of the country in case of foreign invasion, with power to call the militia of the States into active service if necessary;

(6) To conduct the operations of war as Commander-in-Chief of the Army and Navy of the Union;

(7) To appoint all persons in the public service of the Union whose appointment is not given by the Constitution or laws to some other authority;

(8) To remove his appointees at his pleasure;

(9) To present to the House of Representatives on the first day of its annual sessions the budget of revenues and expenses and the general account of the Treasury;

(10) To see that justice is properly and speedily administered, instituting through the Public Ministry the trial of all delinquents and the dispatch of all civil suits in the Tribunals and Courts of the Union;

(11) To prevent any armed aggression by one State of the Union upon another or upon a foreign country;

(12) To see that Congress meets on the day appointed by the Constitution, taking timely measures in order that the Senators and Representatives receive the aids provided by law for their journey;

(13) To grant patents guaranteeing for a fixed period property in literary works and useful inventions applicable to new industrial operations or to the improvement of existing ones;

(14) To appoint with the approval of the Senate Secretaries of State, superior officers of the various administrative departments, Diplomatic Agents, and those Military Chiefs whose appointment belongs to him;

(15) To grant letters of naturalization in accordance with law;

(16) To issue letters of marque and sailing licenses;

(17) To present to Congress at the beginning of the ordinary sessions a written report on the state of the Union accompanied by the reports of the Secretaries of State;

(18) To give the Houses any special information they may request, provided it does not relate to diplomatic negotiations which in his judgment should not be given;

(19) To preserve the general peace;

(20) To perform all other functions that may be assigned to him by the Constitution and laws.

Article 67: When the President personally directs military operations beyond the capital of the Union, the proper Presidential Alternate (*Designado*) shall take charge of the Executive Power in all the other branches of the administration.

Article 68: For the dispatch of affairs within the competency of the Executive Power of the Union the President shall have such Secretaries of State as the law may determine. All acts of the President, with the exception of the decree appointing or removing Secretaries of State, shall be authorized by one of the Secretaries, without which authorization they shall not be obeyed.

TITLE VIII

THE JUDICIAL POWER

Article 69: The Judicial Power is exercised by the Senate, a Federal Supreme Court, the Tribunals and Courts of the States, and also by those Courts which may be established in the territories that are to be governed by special legislation.

Trials for military crimes and offenses among the forces of the Union are within the competence of the national Judicial Power.

Article 70: The Federal Supreme Court shall be composed of five Justices, and there shall not be at the same time more than one Justice who is a citizen, native or inhabitant, of any one State.

Article 71: The Federal Supreme Court shall have the following powers:

(1) To take cognizance of actions brought against the President

and the Secretaries of State for common criminal offenses, their suspension from office having been previously declared by the Senate after that body shall have decided that there is just cause for instituting proceedings;

(2) To take cognizance of actions brought against the Attorney-General of the Union, the Justices of the Federal Supreme Court, and the public ministers of the nation serving abroad, for common criminal offenses;

(3) To take cognizance of all cases involving the question of responsibility brought against diplomatic and consular officers for malfeasance in office;

(4) To take cognizance of all cases involving the question of responsibility brought against Governors, Presidents, superior officers, and Judges of the Superior Tribunals of the States for violation of the Constitution and laws of the Union;

(5) To take cognizance of all cases involving the question of responsibility brought against Generals and Commanders-in-Chief of the national forces, and against the chief officers of the Treasury Department of the Union;

(6) To decide all questions arising between the States themselves, or between one or more of them and the general government of the Union in matters of competence relative to powers, property, boundaries, and all other matters of dispute;

(7) To take cognizance of all matters relating to maritime prizes, the violation by national and foreign ships of legal enactments concerning foreign commerce, pilotage, and the coasting trade, or of the formalities to be observed in the national ports, or concerning the regulations relative to maritime navigation and to the navigation of such rivers as touch the territory of more than one State or which flow to a contiguous country;

(8) To take cognizance of all controversies which may arise regarding the contracts or agreements into which the government of the Union may enter with the States or with private individuals, and in the last resort of all questions involving the provisions of public treaties;

(9) To take cognizance of controversies relative to interoceanic communications through the territory of the Union and the security of transit therein;

(10) To take cognizance of all disputes relative to the property and revenues of the Union;

(11) To settle questions of competency arising between the Tri-

bunals and Courts of the different States, or between the Tribunals and Courts of one or more States and the Tribunals and Courts of the Union, or between two or more of the latter Tribunals;

(12) To appoint the subordinate officials of the Court itself and freely to remove the same;

(13) To give all information which the legislative Houses, the President of the Union, or the Attorney-General may require concerning matters within the court's jurisdiction;

(14) To declare what acts of the national Congress or of the Executive have been annulled by a majority of the State Legislatures;

(15) To exercise whatever other functions the law may determine with regard to matters within the competence of the general government.

Article 72: On the demand of the Attorney-General or of any citizen, the Supreme Court has the power to suspend by unanimous vote the execution of the acts of State Assemblies on the grounds that such acts may be contrary to the Constitution or laws of the Union, reporting in all cases to the Senate in order that that body may definitively decide upon the validity or nullity of said acts.

TITLE IX

THE PUBLIC MINISTRY (MINISTERIO PÚBLICO)

Article 73: The Public Ministry shall be exercised by the House of Representatives through an official known as the Attorney-General of the Nation and through other functionaries determined by law.

Article 74: The powers of the Public Ministry are:

(1) To see that all public functionaries in the service of the Union fully discharge their duties;

(2) To accuse before the Senate or the Federal Supreme Court all public functionaries who may be accused before such bodies;

(3) To discharge whatever other functions the law may assign to it.

TITLE X

ELECTIONS

Article 75: The election of the President of the Union is to be made by the vote of the States, each State having one vote, which shall be that of the relative majority of their respective Electors according to their legislation. Congress shall declare elected President that citizen who obtains an absolute majority of the votes of the States. In

the event no one receives said majority, Congress shall make the election from among the persons obtaining the largest number of votes.

The citizen who has held the office may not be re-elected for the succeeding term.

Article 76: The election of Justices of the Federal Supreme Court shall be made in the following manner:

The Legislature of each State shall present to the Congress a list of individuals equal to the number of vacancies to be filled, and Congress shall declare elected the five who have the largest number of votes and who fulfil the qualifications provided for in Article 70. All ties shall be decided by lot.

TITLE XI

SUNDRY PROVISIONS

Article 77: The high Federal Officers shall reside in such place or places as the law shall determine.

Article 78: Those territories thinly populated or inhabited by tribes of Indians which the State or States to which they belong may cede to the general government for the purpose of promoting colonization or for making material improvements shall be governed by a special law.

As soon as a territory contains a civilized population of three thousand inhabitants, it shall send a Commissioner to the House of Representatives who shall have a voice and a vote in the discussion of laws concerning the territory and a voice but no vote in the discussion of laws of general interest. When the number of civilized inhabitants reaches twenty thousand, the territory shall send in lieu of a Commissioner a Deputy with a voice and vote in all discussions; and when the population is fifty thousand or more, the territory shall send that number of Deputies to which it may be entitled according to Article 38 of this Constitution.

Article 79: The term of office for the President of the United States and of the Senators and Representatives shall be two years.

Article 80: The term of office for Justices of the Federal Supreme Court shall be four years; and that of the Attorney-General of the Nation shall be two years.

Article 81: The President of the Union, his Secretaries of State, the Attorney-General, and the Justices of the Federal Supreme Court may not be elected to the office of Senator or Representative.

Article 82: Those persons in the public service who are removable

by the President of the Union cease to hold such offices when they accept the office of Senator or Representative.

Article 83: Persons in the public service who are removable by the President of the Union vacate their places two months after the new President takes office in accordance with this Constitution.

Article 84: No revenue, contribution, or tax shall be levied which is not nominally included in the budget which Congress passes annually.

Article 85: No disbursement shall be made from the national Treasury of any sum not expressly voted by Congress, or for a larger amount than that specified.

Article 86: The salary of the President of the Union, of the Senators and Representatives, of the Attorney-General of the Nation, and of the Justices of the Federal Supreme Court may not be increased or diminished during the period for which the persons may have been elected who fill those offices at the time when any increase or diminution may be made.

Article 87: The Justices of the Federal Supreme Court and the Judges of the other national Tribunals and Courts may not be suspended except by virtue of an accusation legally made and admitted, nor may they be deprived of office except in consequence of a judicial sentence given according to law.

Article 88: All Colombians are prohibited from accepting any office, decoration, title, or salary from foreign governments without the permission of Congress. Whosoever contravenes this provision loses his Colombian citizenship.

Article 89: All public officers and bodies are prohibited from exercising any function or authority not clearly conferred upon them.

Article 90: The Executive shall initiate negotiations with the governments of Venezuela and Ecuador for the voluntary union of these three sections of old Colombia in a common nationality under the republican, democratic, and federal form of government analogous to that established by the present Constitution, which will in due time be organized by a general constituent assembly.

Article 91: The law of nations is part of the national legislation. The provisions of said law shall specially prevail in cases of civil war. In consequence, such wars shall be terminated by treaties between the belligerents, who are to observe the humane practices of Christian and civilized nations.

TITLE XII

AMENDMENT

Article 92: This Constitution may be entirely or partially amended with the following formalities:

(1) The amendment must be requested by a majority of the State Legislatures;

(2) It must be discussed and approved in both Houses in accordance with the procedure established for the enactment of legislation;

(3) The amendment must be ratified by the unanimous vote of the Senate of Plenipotentiaries, each State having one vote.

It may likewise be amended by a convention called by Congress for that purpose at the request of all the State Legislatures and composed of an equal number of Deputies for each State.

TITLE XIII

THE CONSTITUTIONAL REGIME

Article 93: This Constitution shall enter into force on the day of its official publication provided it obtains the unanimous acceptance of the Deputies of the States assembled in this Convention as representatives of the sovereignty of the States. Should the deputation from any State refuse to accept it, the Constitution shall not be binding upon that State, and that State shall expressly make known its will through its legislative assembly.

Should the said assembly come to no conclusion on the subject during its next session, or should it not meet within three months after the present Constitution shall have been received in the capital of the State, it shall be considered as accepted in the same manner as it has been by the other States.

Done in Rionegro on the 8th of May 1863.

President and Deputy for the Sovereign State of Panamá:

JUSTO AROSEMENA.

Vice-President and Deputy for the Sovereign State of Cauca: JULIÁN TRUJILLO.

Deputies for the Sovereign State of Antioquia: *José María Rojas Garrido, Domingo Díaz Granados, Mamerto García, Antonio Mendoza, Camilo Antonio Echeverri, Juan C. Soto, and Nicolás F. Villa.* Deputies for the Sovereign State of Bolívar: *Antonio González Carazo, José Araújo, Benjamín Noguera, Ramón Santodomingo Vila, Felipe S. Paz, and Eloy Porto.* Deputies for the Sovereign State of Boyacá:

Santos Gutiérrez, Santos Acosta, Antonio Ferro, Pedro Cortés Holguín, J. Eusebio Otálora, José del Carmen Rodríguez, Gabriel A. Sarmiento, Santiago Izquierdo Z., and Aníbal Currea. Deputies for the Sovereign State of Cauca: *Tomás C. de Mosquera, Andrés Cerón, Ezequiel Hurtado, Peregrino Santacolma, Ramón María Arana, Nicomedes Conto, Antonio L. Guzmán, and Vicente G. de Piñeres.* Deputies for the Sovereign State of Cundinamarca: *Ramón Gómez, Francisco J. Zaldúa, Francisco de P. Matéus, Juan A. Uricoechea, Lorenzo María Lleras, Manuel Ancizar, and Salvador Camacho Roldán.* Deputies for the Sovereign State of Magdalena: *José María L. Herrera, Luis Capella Toledo, Manuel L. Herrera, Juan Manuel Barrera, and Agustín Núñez.* Deputies for the Sovereign State of Panamá: *Buenaventura Correoso, Gabriel Neira, Guillermo Lynch, José Encarnación Brandao, and Guillermo Figueroa.* Deputies for the Sovereign State of Santander: *Foción Soto, Aquileo Parra, Narciso Cadena, Alejandro Gómez Santos, Felipe Zapata, Marcelino Gutiérrez A., and Gabriel Vargas Santos.* Deputies for the Sovereign State of Tolima: *José Hilario López, Bernardo Herrera, Liborio Durán, José María Cuéllar Poveda, and Manuel Antonio Villoria.* Deputies for the Federal District: *Eustorgio Salgar and Wenceslao Ibáñez.* Secretary: *Clímaco Gómez V.*

The National Convention

In the name and by authority of the People of the United Colombian States which it represents, decrees the following Transitory Constitutional Act.

Article 1: Popular elections for President, Senators, and Representatives shall be held this year so that the first constitutional Congress may open its session on February 1, 1864, and the new President will take office before this Congress on the first of April.

Article 2: The general government will continue to maintain relations with friendly nations through Diplomatic Agents who present new credentials, and it will send new credentials to those agents of the Republic who are abroad as soon as the Constitution is sanctioned and the Convention gives its consent.

Article 3: The first President of the United States of Colombia shall be elected by the Convention, and he shall continue in office until April 1, 1864, on which date the President who is elected in accordance with Article 75 of the Constitution shall take office.

Article 4: The Federal Supreme Court composed of the three Justices now in office and the Attorney-General shall continue in office

until the first of next April, at which time they shall be replaced by new functionaries elected in accordance with the Constitution.

Article 5: In its present session the Convention shall perform all functions and powers assigned by the Constitution to Congress and each of its Houses.

Article 6: The State Legislatures in the first session of this year shall vote for the Justices of the Federal Supreme Court so that at its next session Congress may canvass the votes and declare who is thereby elected. Those citizens who may be so elected shall take office April 1, 1864.

Article 7: The Federal District shall continue to be governed by its local government until the Assembly of the Sovereign State of Cundinamarca legally incorporates it into said State. The Supreme Court shall take cognizance of appeals which have been granted by the Judges of the Federal District.

Article 8: The Pact of Union of September 20, 1861, is hereby abrogated.

Done in Rionegro on the 8th day of May 1863.

[*This Transitory Constitutional Act carries the same signature as the Constitution.*]

CONSTITUTION
OF THE
REPUBLIC OF COLOMBIA
(Constitution of 1886)

Constitution of 1886

HISTORICAL BACKGROUND

HISTORICAL EXPERIENCE convinced the liberals that federalism was the form of governmental organization most conducive to the realization of their political ideals and program. Moreover, they were of the opinion that the greater the degree of local autonomy, the greater would be the prospects of success in making their liberal program a political reality. In the Constitution of 1863 they purposely provided for a federal organization in which the national government was weakened by denying to it those powers and mechanisms by which previous governments had been able to intervene in local affairs. For the liberals, the adoption of the Constitution of 1863 was the sign of a new and better day. Events proved, however, that the constitution was to bring chaos and that the high hopes of the liberals were to come to nothing.

In limiting the powers of the national government in the interests of local autonomy, that government was so weakened that the maintenance of domestic peace and order was an impossibility. Local *caudillismo* became rampant, and the national government was too weak to remove this threat to the political integration and stability of the country. The second feature so productive of popular disunity and tension was the extremely anti-Catholic Church provisions of the constitution. These two basic characteristics so irreconcilably fragmented the population of Colombia that only political instability and open rebellion could result. The adoption of the Constitution of 1863 ushered in two decades of intense and often bloody competition for power.

Between the years 1863 and 1886 three political groups were discernible. The radicals (sometimes called "oligarchs" or "doctrinaire liberals") approved of the constitution in all its parts and provisions. When in control of the government they sought to exploit the constitution to its utmost potentialities. The radicals would tolerate no suggestion of modification or amendment. For them the Constitution of Rionegro (1863) was sacrosanct and perfect. Their aggressive implementation of its provisions thoroughly alienated the conservatives and at the same time disturbed and confused the moderate liberals.

At the other extreme of the political spectrum were the conservatives, in whose eyes the Constitution of 1863 was an abomination.

Its anti-Church provisions deeply shocked their religious sensibilities and earned their uncompromising enmity. The inability of the national government to maintain internal order undermined the economic position of the conservative elements who controlled most of the commerce and industry. The extreme local autonomy granted was conducive to conflicting legislation and judicial manipulation, which in turn played havoc with social and economic equilibrium. The conservatives remembered the days when the fundamental law was such that the party controlling the capital controlled the country, the days when the national government was strong enough to protect the Church and promote effectively the economic prosperity of Colombia. These memories steeled their determination and gave purpose to their opposition. For them prosperity and religious integrity could be achieved only by a highly centralized government. For them the Constitution of Rionegro was the climactic stupidity and viciousness of Colombian political evolution. They made common cause with any group seeking to abolish that constitution or even to modify it in the interest of centralization and Catholicism.

The third political group may be called the moderate liberals. They had no program as such. Holding the balance of power, they performed a negative function. Without the support of the moderate liberals, neither the radicals nor the conservatives had a controlling majority. When the trend of events was moving too far or too precipitously to the left, the moderate liberals joined with the conservatives to retard the trend. They supported the radicals when the trend appeared to be moving too far to the right.

The overthrow of conservative domination in the civil war of 1860-1861 was achieved by both branches of the liberal party. Together they drew up and adopted the Constitutions of 1861 and 1863. The moderate liberals were willing to engage in the war and to participate in the establishment of the two constitutions because at that time they had reason to fear what to them were conservative excesses. They looked upon the Constitution of 1863 as an instrument that would remove the dangers inherent in conservative policy. The radical element of the liberal party, however, proved to be as excessive in the other direction. Many of the moderate liberals were devout churchmen. The uncompromising nature of the radical attack upon the Church in the years after 1863 brought them face to face with the necessity of choosing between liberal government and religious integrity. In the second place the inability of the national government under the Constitution of 1863 to maintain internal peace and order disturbed

them. The moderate liberals were presented two undesirable alternatives. To support the radicals and the Constitution of 1863 meant to aid and abet internal disorder and confusion. To support the conservatives meant revolution, or at least return to a governmental organization quite distasteful to their liberal principles. The tactic adopted was that of balance of power. They refused to join permanently with either group.

Manuel Murillo Toro, a leader of the radicals, was the first president elected under the new constitution. His term was from 1864 to 1866. His administration was quite moderate in its actions, and nothing was done to cause the moderate liberals to doubt the wisdom of their alliance with the radicals. The excesses which made them so apprehensive were to come in later radical administrations.

Dr. Murillo Toro was succeeded by General Tomás Cipriano Mosquera, who was elected for the term 1866 to 1868. If General Mosquera can properly be identified with any party, it is the moderate liberals. Nevertheless, he owed his election more to his great personal popularity than to party affiliation or his political ideas. He had served as president under the Constitutions of 1843 and 1861. Moreover, he was the leader and hero of the liberal revolt of 1860. Mosquera was elected more on the basis of his past record than upon the basis of his political philosophy and platform. During his administration it is not really correct to say that any party as such was in control. His was rather a personal administration.

Opposition to General Mosquera developed as soon as he took office. He had always been unpopular with the more radical elements of the liberal party. The radicals attacked him severely in *El Mensajero*, which was edited by Santiago Pérez, Felipe Pérez, Tomás Cuenca, and Felipe Zapata.¹ This periodical, effective instrument in uniting the radical partisans, gave cohesion to their attack. Opposition to Mosquera also manifested itself in Congress, where the conservatives took the lead, supported by a small minority of radical members.

When the Constitution of 1863 entered into force, the conservatives realized that the national government would be weak and that the State governments would be the real source of political power and influence. They concentrated their efforts and attention upon gaining control of the State governments. By the time of Mosquera's administration they had a fair measure of success in this program of action. Several States elected conservative members to Congress. These conservatives, with the support of the few radical members in

¹ Jesús María Henao and Gerardo Arrubla, *Historia de Colombia*, p. 674.

Congress, were sufficiently numerous to offer effective opposition to Mosquera. As a result of their co-operation these two groups made it impossible for him to control the Congress.

To remedy this situation, Mosquera resorted to several stratagems. He prevailed upon some of the more moderate conservatives to accept appointments to diplomatic posts and thereby vacated their seats in Congress. As a result of this maneuver, the narrow margin by which the conservatives were able to offer opposition was obliterated.

To weaken the opposition still more, Mosquera took a step which alienated some of his friends in Congress and at the same time made opposition members more determined than ever. He called upon the House of Representatives to dismiss one member each from the States of Bolívar, Santander, and Tolima. The reason offered for this request was that each of the States was represented by one more member than their respective populations justified. The three States involved were controlled by opposition groups. The House of Representatives was incensed by this high-handed demand and refused to comply. By overreaching himself in this manner, Mosquera lost all the advantage which accrued to him from the diplomatic appointments he had made. This move made new opponents.

But the general was a forceful man and not easily turned from his purpose. Seeing that he could not achieve the liquidation of his opposition in Congress itself, he decided to shift his attack to the States. On his own initiative he set up machinery whereby he could intervene in State politics and government for the alleged purpose of maintaining order. Intervention could be used as a means of aiding the "right" people in political contests and elections. Congress, by now thoroughly apprehensive, answered this manifestation of executive presumption by approving a bill imposing strict neutrality upon the national government in all State political contests. In part this bill provided that "when any portion whatsoever of the citizens in any State shall rise in revolt with the object of overthrowing the existing government and organizing another, the government of the union shall observe the strictest neutrality between the belligerent groups. While the civil war continues in a State, the government of the union shall maintain its relations with the constitutional government until its authority has been discountenanced in all the territory of the State; and it shall recognize the new government and enter into official relations with it after it shall have been organized in conformity with the national constitution."² Mosquera, realizing that such a law, if enforced, would debar

² J. M. Henao and G. Arrubla, *History of Colombia*, p. 488.

him from using his office and power to assist the faction whose victory he desired, vetoed the bill.

At this critical moment another of Mosquera's indiscretions came to light. It was revealed that he had made a secret alliance with Perú against Spain. The alliance was negotiated without the knowledge and approval of Congress, an unconstitutional procedure. This abuse of authority, coming on the heels of his cavalier treatment of Congress, created so much popular hostility to his government that on April 29, 1867, he declared the entire republic under martial law. Mosquera closed the sessions of Congress and assumed dictatorial powers.

Public excitement reached such proportions when Mosquera assumed extraordinary powers that civil war appeared to be inevitable. War was averted because certain leaders of the radicals and conservatives joined forces and carried out a *coup d'état*. The presidential guard was won over, and the conspirators took Mosquera prisoner on May 22, 1867, and delivered him to the Senate for trial. He was found guilty of illegal and unconstitutional conduct; the penalty was exile.

After the fall of Mosquera, the radicals gradually increased their power and influence. Supported by the moderate liberals, they continued in control of the government from 1867 until 1874, when the party again split. This period was characterized by political and economic confusion in the States. In accordance with their traditional political philosophy, the radicals kept the national government weak. Riots, local rebellions, and economic instability reached such proportions that a centralist reaction was inevitable.³ The stage was being set for the "Regeneration" of Rafael Núñez. In other words, the moderate liberals were again becoming worried by the excesses of the radicals and their inability to maintain order in the country. They were again drifting toward an alliance with the conservatives.

The moderate liberals definitely parted company with the radicals in 1874 and became known as the Independents. They established a number of newspapers to create an antiradical public opinion. Their program was one calling for constitutional amendments which would increase the power of the national government so that it could maintain order and stability. At this time (1874), however, the Independents did not seek conservative support. That was to come several years later.

In the presidential election of 1875 the radicals ran Aquileo Parra. The candidate of the Independents was Rafael Núñez. The conserva-

³ José de la Vega, *op. cit.*, pp. 258-269.

tive candidate was Bartolomé Calvo. So evenly were the parties matched that none of the candidates received the necessary majority, and Congress had to make the selection. The radicals exploited their position as the government party; in the session of 1876 Congress selected Parra, the radical candidate.

In the popular voting the radicals had resorted to coercion and intimidation at the polls. This, combined with the radical management of the congressional selection, caused the conservatives to lose all patience. As soon as the session of 1876 was closed, the conservatives revolted in Antioquia and Tolima, two States they controlled. Guerilla bands of conservatives appeared also in the States of Cundinamarca, Boyacá, and Santander. The conservatives expected the Independents to assist in the overthrow of the radical government. But Núñez, the leader of the Independents, refused, saying, "I do not go to sea to founder." The Independents supported the government, and the revolt was crushed.⁴

The conservative revolt temporarily united the two liberal factions, and together they elected a moderate liberal, General Julián Trujillo, for the term 1878-1880. During his administration Trujillo alienated the radicals who had given him support in the election by failing to appoint a satisfactory number of them to his cabinet. In the second place, he made several attempts to persuade Congress to modify the strict anti-Catholic laws. In short, his official conduct was such that another cleavage could not be avoided.

The split became clearly evident in the election of 1879. The radicals offered General Tomás Rengifo and refused to support the government, or Independent candidate, Núñez. With conservative support, the Independents elected Núñez for the term 1880-1882.⁵

Núñez was to be elected to the presidency again for the term 1884-1886. It was during the second administration that he was to show his true greatness. Nothing particularly pertinent to the purposes of this introduction occurred in the first administration. The first election is here mentioned merely to indicate the circumstances under which the moderate liberals and radicals again parted company.

Francisco Javier Zaldúa succeeded Núñez to the presidency in 1882. In this election the radicals sought to reinstate themselves with the Independents by supporting Zaldúa's candidacy. The conservatives offered no candidate in this election. Zaldúa took office April 1, 1882, and died December 21 of that year. Eusebio Otálora succeeded to the

⁴ Máximo A. Nieto, *Recuerdos de la Regeneración*, pp. 26-28.

⁵ Francisco de P. Pérez, *op. cit.*, p. 101.

office after Núñez, who was first in line of succession, refused to serve.

Núñez's second administration began in 1884. The radical-Independent coalition was extremely short-lived. Estrangement became evident even before Zaldúa's death. By the time of the election (1883) the two factions of the liberal party were so completely at odds again that the radicals refused to support the Independent candidate. In this election the Independents frankly courted the support of the conservatives.⁶ With their assistance Núñez was victorious; he took office April 1, 1884.

Núñez's second administration is known in Colombian history as the "Regeneration." Federalism and the radical excesses which characterized it passed from the scene of Colombian politics, and up to the present time there have been no signs of revival. Núñez made valiant efforts to unite the antagonistic elements which had brought so much confusion to Colombia since 1863. He tried to carry into effect a policy of tolerance, moderation, and unity. To avoid an open fight with the radicals, he included some of their leaders in his government. To gain the continued support of the conservatives, he also included some of their leaders. The country was weary of the disorders which had come to be considered the natural result of radical administrations and the Constitution of 1863. Núñez wanted to amend the constitution so as to bring it more in conformity with the political, social, and economic realities of the country; but his efforts came to nothing, and a civil war had to be fought before the fundamental law of the land could be changed.

The coalition of Independents and conservatives which elected Núñez made the radicals realize that their days as an influential political group were numbered unless strong measures were taken. To forestall total eclipse, they rebelled late in 1884. Núñez declared the public order disturbed in the States of Santander, Boyacá, Cundinamarca, and Magdalena and parts of Bolívar. To meet the radical threat to the government's existence, Núñez united the conservatives and Independents into what came to be known as the National party. This party prosecuted the war and brought it to be a successful conclusion on August 26, 1885.

The National party declared the Constitution of 1863 to be no longer in force. On September 10, 1885, Núñez issued a call to the governors of the States to select two delegates to a constituent assembly to draw up another constitution. The assembly which met in Bogotá on November 11, 1885, was composed of eighteen members who were

⁶ Máximo A. Nieto, *op. cit.*, p. 28.

either conservatives or Independents. The assembly approved the Constitution of 1886 on August 4, 1886.

The constitution was not submitted to the States for ratification. Federalism had expired, and the States as such were no longer considered elements of the political organization. The constitution was submitted to the municipal councils of the country. Of the 619 municipal councils in Colombia at that time, 605 voted for adoption and 14 were opposed.

With the adoption of the Constitution of 1886 the radical party and federalism ceased to be factors in Colombian politics. Once again Colombia had a unitary government.

POLITICAL ORGANIZATION

From what has been said in the introductions to preceding constitutions, it can be seen that one of the greatest problems in Colombian political evolution has been the problem of centralism *versus* federalism. Each of these forms of governmental organization has been supported for various political, economic, and social reasons already discussed. Both the federalists and centralists have had the opportunity at one time or another to establish the organization they preferred. The fact that Colombian government has been sometimes centralized and sometimes federalized is significant. That is to say, the fact that Colombians have actually had experience with both forms of government has had a great influence upon the nature of contemporary political organization and performance of governmental functions. For more than one fourth of her independent existence Colombia had a federal government. It seems reasonable, therefore, to conclude that the spirit of localism there is not a myth but a reality, a reality which exerts its influence regardless of what form of government is established.

The Constitution of 1886 re-established unitary government; however, concessions to the spirit of localism had to be made, and to this day have to be maintained. Since 1886 the people of Colombia have been unwilling to accept a government which is completely unitary in organization and operation, or completely federal. There are constitutional provisions designed to give the subdivisions of the country a field of local action. The government established by the Constitution of 1886 is described by Colombian commentators as one based upon the principle of *centralización política y descentralización administrativa*.

Briefly stated, to the Colombians "political centralization" means that there is juridic unity. The power of legislation and the determination of policy are exclusively in the hands of the central government.

The Departments and Municipalities are given a certain amount of latitude in deciding the manner in which national legislation and policy shall be locally executed. This power of discretion as to local application is called "administrative decentralization." The enactments of Department Assemblies and Municipal Councils are by nature ordinances subject to all the limitations which a superior legislative body may place upon the ordinance-making power.⁷

Article 1 of the Constitution of 1886 unequivocally states that "the Colombian Nation is reconstituted a unitary Republic." To make it absolutely clear that the political subdivisions of the country have no residuary powers and no *right* of local self-government, it is further provided that "sovereignty resides essentially and exclusively in the Nation, and from it emanate all the public powers which shall be exercised within the limits prescribed by this Constitution" (Art. 2).

Should all the power implied in Articles 1 and 2 be exercised to its ultimate possibilities, the government would obviously be an extremely centralized one. History has demonstrated that Colombians do not peacefully accept extreme centralization. It is true that all experiments with federal constitutions and government have been unsuccessful. As a people the Colombians have, through trial and error, convinced themselves that a federal organization is an impractical form of government for them. Nevertheless, the spirit of localism is a potent political factor in Colombia. It is still sufficiently strong to make it imperative that some measure of local discretion and local government be made a basic element in their constitutional organization. As an obstacle to the development of excessive centralization, the Constitution of 1886 provides that the Departments and Municipalities shall have certain powers, certain functions, and possess certain properties, all subject, however, to congressionally determined policy and limitations.

The former States were abolished in 1886. The constitution provided that these divisions of Colombian territory were to "retain their present boundaries under the name of Departments" (Art. 4). It was recognized in the constituent assembly that the spirit of localism still prevailed to a degree which made it necessary that some measure of protection against capricious alteration of boundaries by Congress be afforded.⁸ Articles 5 and 6 provided that protection.

⁷ For an excellent statement of the nature and operation of "*centralización política y descentralización administrativa*," see Carlos H. Pareja, *Curso de derecho administrativo*, 2d ed., I, 212-236.

⁸ Colombia, *Antecedentes de la Constitución de Colombia de 1886*, pp. 78-82. This volume is a record of the debates of the constituent assembly.

According to Article 5, the power of Congress to create new Departments within the area of existing Departments was subject to certain constitutionally prescribed conditions. In the first place, the erection of a new Department must "have been requested by four fifths of the Municipal Councils *in the territory to be embraced in the new Department . . .*" (italics inserted). Mere request by the prescribed number of Municipal Councils was, however, not sufficient. Congress could grant such request only if (1) "the new Department shall contain at least 200,000 inhabitants," and (2) "the Department or Departments out of which the new one is to be created shall each retain at least 250,000 inhabitants." The final condition was that "the law creating the new Department shall be enacted by two successive regular sessions of the Congress." Article 6 provided that "the existing boundaries of the Departments shall not be changed except by a law enacted in the manner" and under the conditions just quoted.

The first fact to be noted is that neither the national government nor the Department government could initiate the procedure for the creation of a new Department. In the second place it is to be noted that the Department government as such played no part whatsoever in the procedure and consequently could not obstruct the process. In a federal government the constitutional position of the State is such that no new State may be formed within its jurisdiction without the consent of its legislature. That is to say, the government of the existing State possesses an absolute veto effective against the national government and against any locality within the State which may desire a separate existence.

The arrangement set up in the Constitution of 1886 made a greater concession to the spirit of localism than is the case in a federally organized country. Articles 5 and 6 made it possible for any given locality to obtain a separate existence regardless of how the Department government felt about the matter. A hypothetical case may more clearly illustrate these constitutional provisions.

Department A contains 30 Municipal Districts and has a population of 500,000 persons. The inhabitants of a section of Department A feel that their local needs would be better served if they had a separate existence. Of the 30 Municipal Districts in the Department, 10 are located in this dissatisfied section. If four fifths of the councils of these 10 Municipal Districts (8 councils), petition Congress to erect their section into a new Department, Congress may do this if the section contains at least 200,000 inhabitants and the remainder of Department A is left with at least 250,000 inhabitants.

Before leaving this part of the discussion it should be emphasized that there was no constitutional obligation upon Congress to grant a petition for the creation of a new Department. In the last analysis, the national government, acting through Congress, made the final decision. Article 5 provided that under the said conditions, "the law *may* decree the formation of new Departments" (*italics inserted*). This was a permissive rather than a mandatory provision.⁹

From what has been said, it can be concluded that the Departments had no inalienable right of existence. To prevent complete congressional discretion as to their existence (a characteristic power in a unitary organization), the constitution provided that if Congress wished to create a new Department it could do so only under constitutionally prescribed conditions in which local wishes played a very important role.

In each Department there was a Department Assembly composed of Deputies chosen on the basis of population (Art. 183). A Department Assembly was described in the constitution as "an administrative corporation" (*una corporación administrativa*). In Colombian jurisprudence an "administrative corporation" is a body having an ordinance-making power but not a law-making power. Article 185 provided that Department Assemblies had the power, "by means of ordinances" (*ordenanzas*), to direct and promote certain local activities a bit too numerous to justify quotation here.

To explain the nature of the Department Assembly's ordinance-making power, let us consider the power, granted in Article 185, to "promote primary education." As long as Congress was silent the Department Assembly could do whatever it desired or could afford to do in this matter. Article 185 was the constitutional authorization for whatever action was taken. This article, however, did not recognize or establish these as exclusive and inalienable powers of local government. In the interest of brevity let it suffice to say that other constitutional provisions made it clear that in the last analysis Congress had complete control of departmental activities in the fields mentioned in Article 185. Congress could by law regulate the manner in which the Department Assemblies administered primary education, or Congress could, as it has in fact done, take primary education out of the hands of the Departments. At the present time the Colombian Con-

⁹ The Spanish text was: "*La ley puede decretar la formación de nuevos Departamentos. . . .*" The Codification of 1936 also gives Congress the power to create new Departments under similar conditions. In both constitutions the power is a discretionary one. See Francisco de P. Pérez's commentary on Art. 5 of the Constitution of 1936, *op. cit.*, pp. 135-140.

gress has by law withdrawn from departmental jurisdiction the administration of primary education, justice, national defense, hygiene, customs, and, to a large extent, administration of the police.¹⁰ In other words, any activity by Department Assemblies had to be in accord with any provisions of the constitution or *congressional statutes* relevant to the subject matter involved. In short, departmental activities had to operate entirely within whatever framework *Congress* decided, and the constitution exempted no local government activity from this requirement.

To finance whatever activities they engaged in, the Department Assemblies could "levy taxes under the conditions and within the limits established by law." (Art. 190). Congress determined what they could tax and how they could tax it.

The executive head of each Department was the Governor; his tenure was three years. He was freely appointed and removable by the President (Arts. 120[4] and 194). As was the case in some of the earlier constitutions, this official had a dual capacity; i.e., he was "the agent of the central administration" and also chief executive of the departmental government (Art. 193).

The Constitution of 1886 therefore set up a unitary government in which all constitutional power resided ultimately in the national government. There were no fields of local government constitutionally beyond congressional control should that body desire to exert control. However, in the interest of flexibility there were mentioned certain fields in which the Department Assemblies were free to act as long as Congress had not provided anything to the contrary.

A second basic change introduced by the Constitution of 1886 was the alteration of the church-and-state relationship. The anti-Catholic Church provisions of the Constitution of 1863 were entirely rejected. The Constitution of 1886 recognized Catholicism as "the religion of the Nation." All public authorities were required to "protect it and cause it to be respected as an essential element of the social order" (Art. 38). The constituent assembly was convinced that much of the disorder which prevailed while the Constitution of 1863 was in force was directly attributable to the anti-Catholic nature of that constitution and the government under it. To the constituent assembly protection of the Catholic Church was a social necessity.¹¹

The Catholic Church was not made an established church, and

¹⁰ Carlos H. Pareja, *op. cit.*, I, 214.

¹¹ See the debates on this point in the *Antecedentes de la Constitución de Colombia de 1886*, pp. 141-171.

no one was compelled to contribute to its support or accept its doctrine. Individuals were free to profess any religious beliefs which appealed to them (Arts. 39 and 40). But the government was constitutionally obligated to protect the Catholic Church, services, property, and clergy against indignities. As a further protection of Catholic doctrine and faith, it was provided that "public education shall be organized and directed in accordance with the Catholic Religion" (Art. 41), and priests, although ineligible for other public employment, could be employed as public-school teachers (Art. 54). Finally, the Church was given the power "to administer freely its internal affairs and to exercise acts of spiritual authority and of ecclesiastical jurisdiction" without interference by the civil authorities (Art. 53). This last provision constituted an express renunciation of the *patronato* or right of patronage. Thus the anti-Catholic campaign of the radical party came to an end.

Other radical and liberal constitutional provisions were changed. Unlimited freedom of the press was abolished. Although a free press was provided for, it was made "responsible under law for injuries to personal honor and for disturbance of the social order and public peace" (Art. 42).

Article 91 of the Constitution of 1863 did much to contract the meaning of treason. To obtain the benefits granted by international law to prisoners of war, the liberals made the rules of international law applicable to civil war. Hence those captured in civil war could not be treated as traitors, and the hazards of rebellion were thus reduced. This application of international law and its concomitant benefits were not provided for in the Constitution of 1886.

The right to possess arms and munitions and to engage in the traffic thereof was abolished. "Only the Government may import, manufacture, and possess arms and munitions of war" (Art. 48). The right to possess and traffic in arms was believed to be greatly conducive to civil unrest and productive of the numerous civil wars Colombia had experienced.

The liberals were the first to abolish the death penalty for political offenses. This prohibition was retained in the Constitution of 1886 (Art. 30).

The liberals had always been opposed to indirect elections, property and literacy qualifications for voting and office holding, and selection of public officials by appointment. The liberals had gone a long way toward complete implementation of these ideas in the Constitution of

1863. A reaction against them manifested itself in the Constitution of 1886.

The only public officials who were directly elected were members of the House of Representatives, Electors, Deputies to the Department Assemblies, and members of the Municipal Councils. Four officials were indirectly elected: the President and Vice-President by Electors, Senators by the Department Assemblies, and the Presidential Alternate (*Designado*) by the Congress. All other officials were appointed.

The minimum qualifications for voting were three: to be a male, twenty-one years of age, and engaged in some lawful profession or occupation (Arts. 15 and 18). The possession of these qualifications, however, entitled one to vote for only two of the four kinds of officials directly elected, i.e., for members of the Municipal Councils and Department Assemblies. To vote for the other two (members of the House of Representatives and Electors), there were the additional requirements of being able to read and write and of having an annual income of five hundred pesos or possessing real property valued at fifteen hundred pesos (Art. 173).

To be elected President, Vice-President, or Senator, among other qualifications, one had to be a native-born Colombian having "an annual income of at least two thousand pesos derived from property or from the exercise of an honest profession" (Art. 94; see also Arts. 115 and 129).

The liberals, particularly the radical elements in that party, had always been opposed to any constitutional provision authorizing the government to assume extraordinary powers. Such authorization enabled the full weight of national power to be brought to bear upon a locality in which peace was allegedly disturbed as a result of a local political contest. It gave the central government too great a control over the country and offered a legal opportunity or justification for interfering too effectively in matters considered to be of local concern. It was considered a legal procedure admirably suited to unwarranted and unfair interference. As they looked back over Colombian political history, the radicals were convinced that the power of the central government to assume extraordinary powers had been one of the most potent devices in keeping their party so long submerged. As we have seen above, the radicals, along with the liberals, abolished this power the first opportunity they got. By 1886, however, the conservatives and moderate liberals were of the opinion that the absence of the power was the cause of the chronic political instability which characterized Colombian political history from 1863 to 1886. For this reason the

power to assume extraordinary powers was restored to the government in the Constitution of 1886 (Arts. 76[10] and 121).

As has always characterized the nonfederal constitutions of Colombia, the amendment process set up in the Constitution of 1886 was entirely in the hands of Congress. The Departments had no participation whatsoever. An amendment was passed by ordinary legislative procedure during one session of Congress. It was then required that the President, acting through the proper Minister of State, submit the proposed amendment "to the next session for its definitive action and by it [to be] newly debated and finally adopted by a two-thirds vote of both Houses" (Art. 209).

In the Constitutions of 1858, 1861, and 1863 the liberals and radicals had incorporated various provisions designed to facilitate their success in the contest for political power. All these provisions were repudiated or modified in the manner explained above by the constituent assembly when it drafted the Constitution of 1886.

The organization of the national government under the Constitution of 1886 will be reserved for discussion in the introduction to the Constitution of 1936. This seems justifiable for several reasons. In the first place, the present introduction has grown beyond all reasonable length. In the second place, the basic framework and organization of the national government as set up in the Constitution of 1886 were continued in the Constitution of 1936. In fact, the latter constitution is not, in the true sense, a new constitution. It is a codification of the Constitution of 1886 and the amendments thereto added in the years between 1886 and 1936.

A translation of the *Constitution of the Republic of Colombia*, herein referred to as the Constitution of 1886, follows.

CONSTITUTION OF THE REPUBLIC OF COLOMBIA

In the Name of God, Supreme Source of all Authority,

The Delegates of the Colombian States of Antioquia, Bolívar, Boyacá, Cauca, Cundinamarca, Magdalena, Panamá, Santander, and Tolima in National Constituent Convention assembled;

In view of the approval given by the Municipalities of Colombia to the bases of a Constitution adopted on December 1, 1885;

And with the object of strengthening the national unity and of insuring the benefits to be derived from justice, liberty, and peace have agreed to decree, and do hereby decree the following

CONSTITUTION OF COLOMBIA TITLE I

THE NATION AND TERRITORY

Article 1: The Colombian Nation is reconstituted a unitary Republic.

Article 2: Sovereignty resides essentially and exclusively in the Nation and from it emanate all the public powers which shall be exercised within the limits prescribed by this Constitution.

Article 3: The boundaries of the Republic are the same as those which in 1810 separated the Viceroyalty of New Granada from the Captaincies-General of Venezuela and Guatemala, from the Viceroyalty of Perú, and from the Portuguese possessions in Brazil; and with regard to Ecuador, they shall be provisionally the same as those designated in the treaty of July 9, 1856.

The boundaries separating Colombia from contiguous countries shall be definitively fixed by public treaties which may be negotiated without reference to the principle of *uti possidetis* recognized in 1810.

Article 4: The territory together with the public property therein contained belong exclusively to the Nation.

The divisions that composed the Colombian Union, denominated as States and National Territories, shall continue to be parts of the territory of the Republic of Colombia and shall respectively retain their present boundaries under the name of Departments.

All doubtful boundaries shall be determined by commissions of surveyors appointed by the Senate.

The former National Territories are hereby incorporated into the divisions to which they originally belonged.

Article 5: The law may decree the formation of new Departments to be created out of those already existing when such shall have been requested by four fifths of the Municipal Councils in the territory to be embraced in the new Department, subject always to the following conditions:

(1) That the new Department shall contain at least 200,000 inhabitants;

(2) That the Department or Departments out of which the new one is to be created shall each retain at least 250,000 inhabitants;

(3) That the law creating the new Department shall be enacted by two successive regular sessions of the Congress.

Article 6: The existing boundaries of the Departments shall not be changed except by a law enacted in the manner directed in the last paragraph of the preceding article.

Congress may by a law enacted in the usual manner and without the above-mentioned conditions separate the Territories referred to in Article 4 and the islands from the Departments in which they are now incorporated or to which they belonged and dispose of them as it may deem proper.

Article 7: Besides the general division of territory there shall be others within the boundaries of each Department for purposes of the public service.

The several divisions relating to finance, military affairs, and public education may not coincide with the general division.

TITLE II

THE INHABITANTS: NATIONALS AND ALIENS

Article 8: The following are Colombian nationals:

(1) By birth:

Those who are natives of Colombia under either of the following conditions: The father or mother being a native Colombian, or, being children of aliens, they are domiciled in the Republic.

Legitimate children of Colombian father and mother who were born abroad and who shall afterwards establish their domicile in the Republic shall be considered Colombians by birth for all purposes for which the laws may require this qualification;

(2) By origin:

Those who are born in foreign countries of a native Colombian mother or father, and are domiciled in the Republic; and all Spanish-Americans who may appear before the Municipal authorities of the place in which they reside and ask to be registered as Colombians;

(3) By adoption:

Aliens who request and obtain letters of naturalization.

Article 9: The status of Colombian national is lost by obtaining letters of naturalization in a foreign country and establishing a domicile therein; it may be recovered in accordance with law.

Article 10: It is the duty of all nationals and aliens in Colombia to live in submission to the Constitution and laws and to respect and obey the authorities.

Article 11: Aliens shall enjoy in Colombia the same rights as are conceded to Colombians by the laws of the Nation to which such aliens belong, except those which are stipulated in public treaties.

Article 12: The law shall define the condition as well as the rights and obligations of resident aliens.

Article 13: Any Colombian who is captured in a war against Colombia with arms in hand shall be tried and punished as a traitor even though he has lost his status as a national.

Naturalized persons and aliens residing in Colombia shall not be compelled to bear arms against the country of their origin.

Article 14: Societies and corporations which are recognized in Colombia as artificial persons shall not enjoy any other rights than those accorded natural persons who are Colombians.

Article 15: All male Colombians who have attained the age of twenty-one years and who exercise a profession, art, or employment, or who follow a lawful occupation or other legitimate and recognized means of support shall be considered citizens.

Article 16: Citizenship is lost when nationality is lost.

A citizen shall also forfeit his citizenship in any one of the following cases when such forfeiture has been ordered by the courts:

(1) When he enters the service of a nation at war with Colombia;

(2) For having belonged to a faction rebelling against the government of a friendly nation;

(3) When condemned to suffer corporal punishment;

(4) When removed from public office by a criminal procedure or for an act affecting his civil responsibility;

(5) For committing acts of violence, falsification, or corruption in elections.

All persons who have lost their citizenship may petition the Senate for restoration thereof.

Article 17: The exercise of the rights of citizenship is suspended:

(1) For notorious mental derangement (*notoria enajenación mental*);

(2) By judicial decree;

(3) For habitual drunkenness;

(4) While charges are pending in a criminal matter and after the issue of a warrant of arrest.

Article 18: The status of citizen is an indispensable condition precedent for the exercise of the right to vote and to hold any public office of authority or power.

TITLE III

CIVIL RIGHTS AND SOCIAL GUARANTEES

Article 19: The authorities of the Republic are established in order to protect the lives, honor, and property of all persons residing in Colombia, and to assure the mutual observance of natural rights, and the prevention and punishment of crimes.

Article 20: Private persons are not responsible to the authorities except for violations of the Constitution or laws. Public officers are responsible in the same manner as well as for exceeding their powers or for failing to execute them.

Article 21: In case of a manifest violation of any constitutional provision to the injury of any person, a superior's order shall not exempt from responsibility the agent who may execute it.

The military, on active service, shall not be held to this responsibility. With respect to them, the superior who gives the order shall alone be responsible.

Article 22: There shall be no slaves in Colombia.

Any person being a slave who shall enter the territory of the Republic shall be free.

Article 23: No one shall be molested in his person or family, or imprisoned or arrested, nor shall his domicile be searched unless upon a written warrant from competent authority issued with all legal formalities and for an offense previously defined by law.

In no case may he be detained, imprisoned, or arrested for purely civil offenses or obligations, save that he may be required to give security.

Article 24: A person taken *in flagrante delicto* may be arrested

and carried before a Judge by any other person. If the police pursue him and he takes refuge in his own dwelling, they may enter for the purpose of apprehending him; and if he seeks asylum in the house of another, requisition for him should first be made of the owner or tenant thereof.

Article 25: No person shall be compelled to testify in criminal or police proceedings against himself or against his relatives to the fourth degree of consanguinity or the second degree of affinity.

Article 26: No one may be prosecuted except for the violation of laws enacted prior to the offense with which he is charged and before a competent Tribunal in accordance with all the formalities applicable to his case.

In all criminal matters the accused shall have the benefit of the laws which most leniently affect the charge against him although enacted after the commission of the offense.

Article 27: The preceding article notwithstanding, punishments may be inflicted without previous trial and within the precise limits set forth by law by the following officers:

(1) Those officers exercising authority or jurisdiction who have the power to punish by fine or imprisonment for injury or disrespect toward them in the discharge of their official duties;

(2) Military Chiefs who may inflict immediate punishment in order to subdue a military insubordination or mutiny or to maintain discipline in the face of the enemy;

(3) Masters of ships who, not being in port, may exercise the same authority in order to prevent the commission of crime on board.

Article 28: Even in time of war no person shall be punished under an *ex post facto* law but only in accordance with a law, order, or decree by which the act shall have been previously prohibited and the punishment prescribed.

Even in time of peace this provision shall not prevent the Government, after previous consultation with the Ministers, from ordering the arrest or detention of persons seriously suspected of having committed a crime against the public peace.

Article 29: The Legislature may prescribe death as a punishment only in those cases defined as most grave, to wit, the following crimes judicially proved: treason in time of a foreign war, parricide, assassination, arson, assault in a gang of malefactors, piracy, and certain military crimes defined by military law.

At no time may the death penalty be inflicted in any cases not comprehended within this article.

Article 30: There shall be no death penalty for political offenses. The law shall define such offenses.

Article 31: Rights acquired by individuals and corporations under a proper title and according to the civil law shall not be disavowed or violated by laws subsequently enacted.

When in the application of a law enacted for the public welfare there should result a conflict between private rights and a recognized necessity for that law, private interests shall yield to public interests. But for any expropriations which it may be necessary to make there shall be given full indemnity in accordance with the following article.

Article 32: In time of peace no person shall be deprived of his property in whole or in part except as punishment, or under judicial compulsion, or in return for indemnity, or as a general contribution in accordance with law.

For grave reasons of public necessity, to be defined by the Legislature, forcible alienation of property may take place by means of a judicial mandate, and the owner of the property shall be indemnified for its value before the expropriation is confirmed.

Article 33: In time of war and solely for the purpose of effecting the restoration of public order, the necessity for expropriation may be decreed by authorities not vested with judicial power and without prior indemnification.

In such case real property may be occupied only temporarily either to meet the necessities of war or to provide for it with the revenues of the occupied property as a pecuniary penalty imposed on the owners according to law.

The Nation shall always be responsible for expropriations made by the Government or its agents.

Article 34: The penalty of confiscation may not be imposed.

Article 35: Literary and artistic production shall be protected as personal property during the lifetime of the author and for eighty years thereafter, subject to such formalities as may be prescribed by law.

This same guarantee is offered to owners of works published in Spanish-speaking countries without the necessity of declaring it by means of international conventions, provided the said countries extend reciprocal treatment in their legislation.

Article 36: Gifts *inter vivos* or by legal testament for the purposes of charity or public education may not be changed or modified by the Legislature.

Article 37: In Colombia there shall be no real estate which may

not be freely transferred, nor shall there be any irredeemable obligations.

Article 38: The Apostolic Roman Catholic Religion is the religion of the Nation. The public authorities shall protect it and cause it to be respected as an essential element of the social order.

It is understood that the Catholic Church is not and shall not be an established Church, and it shall preserve its independence.

Article 39: No one shall be molested because of his religious opinions or compelled by the authorities to profess beliefs or observe practices contrary to his conscience.

Article 40: The practice of all cults not contrary to Christian morals or law is permitted.

Acts contrary to Christian morals or subversive of the public order done in connection with or under the pretext of religious worship shall be subject to ordinary law.

Article 41: Public education shall be organized and directed in accordance with the Catholic Religion.

Primary education supported by public funds shall be gratuitous and not compulsory.

Article 42: The press is free in time of peace, but it shall be responsible under law for injuries to personal honor and for disturbance of the social order and public peace.

No periodical publication shall receive any pecuniary aid from other governments or foreign companies without the permission of the Government.

Article 43: All correspondence entrusted to telegraph companies and post offices is inviolable. Letters and private papers shall not be intercepted or examined except by order of a competent authority in such cases and with such formalities as may be provided by law and for the sole purpose of procuring evidence.

The circulation of printed material through the postal system may be subjected to postal fees but never prohibited in time of peace.

Article 44: Any person may pursue any honest trade or occupation without the necessity of membership in any guild or association.

The authorities may inspect industries and professions in the interests of public morals, security, and health.

The law may exact proofs of competency for the practice of the medical and related professions.

Article 45: All persons have the right to present respectful petitions to the authorities whether for reasons of public or private interest and to receive prompt consideration thereof.

Article 46: All classes of persons may meet in peaceful assemblies.

The authorities may disperse all assemblies which degenerate in disorder or tumult or which obstruct the public highways.

Article 47: The formation of public or private companies or associations which are not contrary to morality or the legal order shall be permitted.

All popular political organizations of a permanent character are forbidden.

In order to enjoy the protection of the laws all religious associations shall present to the civil authorities their authorization issued by their respective ecclesiastical superiors.

Article 48: Only the Government may import, manufacture, and possess arms and munitions of war.

No persons shall be permitted to carry arms in towns without permission from the authorities. This permission shall in no case be given to persons attending political meetings, elections, or the sessions of public assemblies or corporations, whether they participate therein or are present only as spectators.

Article 49: Legal and public corporations shall be recognized as artificial persons and by virtue thereof may execute all civil acts and enjoy all the guarantees assured by this title under such general limitations as may be imposed by law for the common good.

Article 50: The law shall determine the civil status of persons and shall prescribe their respective rights and obligations.

Article 51: The law shall determine the responsibility to be incurred by public officers of all classes who invade the rights guaranteed in this title.

Article 52: The provisions contained in this title shall be incorporated in the Civil Code as a preliminary title and may not be altered except by an act amending the Constitution.

TITLE IV

RELATIONS BETWEEN CHURCH AND STATE

+ *Article 53:* In Colombia the Catholic Church shall have power to administer freely its internal affairs and to exercise acts of spiritual authority and of ecclesiastical jurisdiction without authorization from the civil authorities; and as a juridic person represented in each diocese by its respective legitimate prelate, shall also have the right to perform civil acts in virtue of rights recognized by the present Constitution.

+ *Article 54:* Sacerdotal functions are incompatible with those of

public political office. Catholic priests may, nevertheless, be employed in public education and charity.

Article 55: Edifices intended for Catholic worship, seminaries for religious instruction, and the residences of Bishops and parish priests shall not be taxed or occupied for any purpose other than for which they were intended.

Article 56: The Government shall have power to negotiate agreements with the Holy See with a view to the adjustment of pending questions and to defining and establishing the relations between the civil and ecclesiastical authorities.

TITLE V

THE NATIONAL POWERS AND THE PUBLIC SERVICE

Article 57: All public powers shall be limited, and they shall independently exercise their respective functions.

Article 58: The power to enact legislation shall be vested in Congress.

Congress shall be composed of the Senate and the House of Representatives.

Article 59: The President of the Republic is the head of the Executive Power, which he exercises with the indispensable co-operation of the Ministers. The President and the Ministers, and in each individual action the President and the Minister of the ministry involved, constitute the Government.

Article 60: The Judicial Power is exercised by the Supreme Court, the Superior District Tribunals, and the other Tribunals and Courts established by law.

The Senate exercises certain judicial functions.

Article 61: No person or corporation shall, in time of peace, exercise at the same time political or civil and judicial or military authority.

Article 62: The law shall determine all cases in which incompatibility of functions exists; the cases relating to the responsibility of public officers and the manner of making it effective; the qualifications and necessary antecedents requisite for the exercise of certain employments in cases not provided for by the Constitution; the conditions for promotion and retirement; and the kinds or classes of civil or military services that shall be entitled to pensions from the public treasury.

Article 63: There shall be no office in Colombia the duties of which are not defined by law or regulation.

Article 64: No person shall receive two salaries from the public treasury except in special cases determined by law.

Article 65: No public officer shall enter upon the discharge of his office until he has taken an oath to sustain and defend the Constitution and to perform the duties of his office.

Article 66: No Colombian in the service of Colombia shall, without the permission of the Government, receive from a foreign government any honor or gift under penalty of forfeiting his office.

Article 67: No Colombian may receive from a foreign government any employment or commission near that of Colombia without having previously obtained necessary authorization from the latter.

TITLE VI

SESSIONS AND POWERS OF CONGRESS

Article 68: The legislative Houses shall meet in ordinary session by their own right every two years on July 29 in the capital of the Republic.

The ordinary sessions shall continue for 120 days, after which the Government may declare the Houses adjourned.

Article 69: The two Houses shall be opened and closed publicly and at the same time.

Article 70: The two Houses shall not open their sessions nor deliberate with less than one third of their members present.

The President of the Republic in person or acting through his Ministers shall open and close the Houses.

This ceremony is not essential to the legal exercise of congressional functions.

Article 71: When on the arrival of the day for the assembling of Congress it is found that the requisite quorum is not present, those members present sitting in preparatory or provisional council shall impose such fines upon absent members as may be prescribed by the respective Houses, and the sessions shall be opened as soon as the requisite number of members is present.

Article 72: Congress may be called into special session by the Government. In special sessions it may deal only with those matters which the Government submits for its consideration.

Article 73: By agreement of the two Houses, Congress may assemble at another place, and in case of public disturbance it may assemble at a place designated by the President of the Senate.

Article 74: Congress shall assemble in joint session only for the

purpose of inducting the President of the Republic into office and of performing the act prescribed in Article 77.

In such cases the Presidents of the Senate and House of Representatives shall be President and Vice-President of the Congress respectively.

Article 75: Any meeting of the members of Congress for the purpose of exercising the Legislative Power which is held in violation of the constitutional provisions shall be illegal, any actions taken shall be null, and the individuals participating in the deliberations shall be punished according to law.

Article 76: The power to enact legislation belongs to Congress.

By means of laws it exercises the following powers:

- (1) To interpret, amend, and repeal pre-existing laws;
- (2) To modify the general division of the territory in accordance with Articles 5 and 6 and to establish and change whenever necessary the other territorial divisions mentioned in Article 7;
- (3) To confer special powers upon Department Assemblies;
- (4) To provide whatever may be necessary for the administration of Panamá;
- (5) To change the residence of the high national authorities whenever under extraordinary circumstances and for grave reasons it may be deemed necessary for public convenience;
- (6) To determine the size of the standing Army every two years in ordinary session;
- (7) To create all offices required by the public service and to fix their respective salaries;
- (8) To regulate the public service, determining all matters referred to in Article 62;
- (9) To authorize the Government to make contracts, negotiate loans, alienate national property, and exercise other prerogatives within constitutional limits;
- (10) To invest the President of the Republic temporarily with such extraordinary powers as necessity may require or the public convenience demand;
- (11) To provide for the national revenues and to determine the expenses of administration.

Each session shall vote a general budget of revenues and expenses.

The estimates so made shall not include any item not previously decreed by law or credit not judicially recognized;

- (12) To examine the national debt and arrange for servicing it;
- (13) To decree extraordinary taxes when necessary;

(14) To approve or reject contracts or agreements entered into by the President of the Republic with private persons, companies, or political entities wherein the national Treasury is interested if such have not been previously authorized, or if the formalities prescribed by Congress have not been complied with, or if any condition contained in the law authorizing them has been disregarded;

(15) To fix the weight, type, and denomination of money and to regulate the system of weights and measures;

(16) To organize the public credit;

(17) To decree the building or continuance of public works and the erection of public monuments;

(18) To encourage the construction of such useful and beneficial works as may be deemed worthy of encouragement and support;

(19) To decree public honors to citizens who have rendered distinguished service to the fatherland;

(20) To approve or reject treaties entered into by the Government with foreign powers;

(21) To grant amnesties and general pardons for political offenses by a vote of two thirds of the members of each House for grave reasons of public convenience. In case the recipient of a pardon is thereby relieved of civil responsibility to any person, the Government shall be obligated to indemnify that person;

(22) To limit or regulate the appropriation or conveyance of waste lands.

Article 77: In its ordinary sessions Congress shall elect for a term of two years the Presidential Alternate (*Designado*), who shall exercise the Executive Power in default of both the President and Vice-President.

Article 78: The following acts are prohibited to Congress and to either of its Houses:

(1) To bring moral compulsion (*dirigir excitaciones*) upon public officers;

(2) To enact laws or adopt resolutions concerning matters exclusively within the jurisdiction of other branches of government;

(3) To vote approval or censure of any official act;

(4) To require the Government to furnish the instructions given to Diplomatic Agents or to give information relative to negotiations of a secret nature;

(5) To grant any person or entity any reward, indemnity, pension, or other pecuniary consideration that is not intended to satisfy

credits or rights recognized by pre-existing law, except for that provided in Article 76, subsection 18;

(6) To enact laws of banishment or persecution against persons or corporations.

TITLE VII

CONCERNING THE ENACTMENT OF LAWS

Article 79: Laws may originate in either House and may be introduced by any member thereof or by the Ministers of State.

Article 80: The following are excepted from the provisions of the preceding article:

(1) Those laws which may originate only in the House of Representatives (Article 102, subsection 2);

(2) Enactments relative to the civil law and judicial procedure which may not be modified except by a bill introduced by the special standing committees of each House or by the Ministers of State.

Article 81: No legislative enactment shall become law unless:

(1) It shall have been approved in each House, after three readings on separate days, by a majority of the members present;

(2) It shall have been sanctioned by the Government.

Article 82: The consideration of a law cannot be closed upon the second reading or voted upon the third reading without the attendance of an absolute majority of the persons composing the House.

Article 83: The Government may take part in all legislative debates through the Ministers of State.

Article 84: The Justices of the Supreme Court may participate in the debate of all bills relating to civil laws and judicial procedure.

Article 85: After a bill has been approved by both Houses it shall be sent to the Government, and if the latter approve it also, it shall be promulgated as law.

If it is not approved, the Government shall return it, with objections, to the House in which the bill originated.

Article 86: The President of the Republic shall be allowed a period of six days within which to return a bill with objections provided it does not contain more than fifty articles; ten days if the bill contains from fifty-one to two hundred articles; and fifteen days if the bill contains more than two hundred articles.

If the President, after the expiration of these periods of time, has not returned the bill with objections, he must approve and promulgate the law. But if the Houses adjourn within the periods of time

prescribed, the President must publish the bill with his approval or objections within ten days after the Congress has adjourned.

Article 87: A bill objected to as a whole shall be returned by the President for reconsideration by the Houses on the third reading. If it has been objected to only in part, it shall be placed upon its second reading for the sole purpose of considering the objections of the Government.

Article 88: The President of the Republic shall approve, without the power to present new objections, every bill which upon reconsideration has been approved by a two-thirds majority in each House.

Article 89: If the Government fails to approve bills under the terms and according to the conditions established by this title, it shall be the duty of the President of the Congress to approve and promulgate the same.

Article 90: If a bill is objected to on the grounds of unconstitutionality, it shall be excepted from the provisions of Article 88. In this event, if the Houses insist, the bill shall be referred to the Supreme Court, which shall within six days decide upon its constitutionality. An affirmative decision by the Court obligates the President to approve the law. If the decision is negative the bill shall fail.

Article 91: All bills left pending in the session of one year may not be considered except as new bills by another legislative session.

Article 92: The text of all laws shall begin with this formula:
The Congress of Colombia decrees—

TITLE VIII

THE SENATE

Article 93: The Senate shall be composed of three Senators for each Department.

Two Alternates (*Suplentes*) shall be elected for each Senator.

Article 94: Senators shall be native-born Colombians in the full exercise of the rights of citizenship, they shall be more than thirty years of age, and they shall have an annual income of at least two thousand pesos derived from property or from the exercise of an honest occupation.

Article 95: Senators shall be elected for a term of six years, and they shall be eligible indefinitely for re-election.

The Senate shall be elected by thirds in the manner determined by law.

Article 96: The Senate shall take cognizance of all accusations

brought by the House of Representatives against officers in accordance with Article 102, subsection 4.

Article 97: In all trials by the Senate the following rules shall be observed.

(1) Whenever an accusation is publicly made, the accused shall *ipso facto* be suspended from office;

(2) If the accusation charges offenses committed in the performance of duties or unfitness on account of misconduct, the Senate may not impose any other penalties than removal from office or the temporary or permanent deprivation of political rights; but if the accused is charged with offenses which merit other penalties, he shall be tried by the Supreme Court according to criminal procedure;

(3) If the accused is charged with common crimes, the Senate shall determine whether there are grounds for proceeding against him; and in the event of an affirmative decision it shall remand him to the Supreme Court for trial;

(4) The Senate may refer the preparation of the trial to a committee of its own members, reserving to itself the duty of trial and of pronouncing sentence, which shall be done in open session by a vote of at least two thirds of the Senators participating in the trial.

Article 98: The Senate shall have the following powers:

(1) To restore citizenship to those who have lost it. According to the circumstances in each case, this act of clemency shall extend only to electoral rights, or the capacity to fill certain public posts, or to the exercise of all political rights;

(2) To appoint two members to the Council of State;

(3) To accept or reject the resignations of the President and Vice-President of the Republic and of the Presidential Alternate (*Designado*);

(4) To confirm or reject the appointments of Justices to the Supreme Court made by the President of the Republic;

(5) To confirm or reject military appointments made by the Government from the rank of Lieutenant Colonel to that of the highest rank in the Army or Navy;

(6) To grant the President of the Republic permission to absent himself temporarily from office for other cause than illness, or to permit him to exercise his functions outside the capital;

(7) To permit the passage of foreign troops through the territory of the Republic;

(8) To appoint the survey commissions referred to in Article 4;

(9) To authorize the Government to declare war against another nation.

TITLE IX

HOUSE OF REPRESENTATIVES

Article 99: The House of Representatives shall be composed of one member for every fifty thousand inhabitants of the Republic.

Two Alternates (*Suplentes*) shall be elected for each Representative.

Article 100: To be elected Representative one must be a citizen in the full exercise of the rights thereof who has not been condemned for an offense meriting corporal punishment and who is more than twenty-five years of age.

Article 101: Representatives shall be elected for a term of four years and shall be eligible indefinitely for re-election.

Article 102: The House of Representatives shall have the following powers:

(1) To examine and pronounce finally upon the general account of the Treasury;

(2) To initiate all laws for the levying of taxes and for the organization of the Public Ministry;

(3) To appoint two members of the Council of State;

(4) To impeach before the Senate when occasion shall require it the President and Vice-President of the Republic, Ministers of State, Councilors of State, the Attorney-General of the Nation, and Justices of the Supreme Court;

(5) To examine charges and complaints presented to it by the Attorney-General of the Nation or by private persons against any of the above-mentioned officers except the President and Vice-President, and if found proper to prepare the Articles of Impeachment for consideration by the Senate.

TITLE X

PROVISIONS COMMON TO BOTH HOUSES AND TO THE MEMBERS THEREOF

Article 103: Each of the two Houses shall have the following powers:

(1) To make its own rules and regulations and to take whatever measures are deemed necessary to insure the attendance of its members;

(2) To create and provide for such offices as may be deemed necessary for the discharge of its business;

(3) When necessary, to organize a police force for the building in which it holds its sessions;

(4) To determine whether the credentials which each member presents on taking his seat are in accordance with law;

(5) To answer or decline to answer the messages of the Government;

(6) To call upon the Ministers of State for written or verbal reports necessary for the better performance of the work of the respective House or to inform itself of the acts of the administration, except such as are reserved from such inquiry by Article 78, subsection 4;

(7) To appoint committees to represent it in official acts;

(8) To appoint speakers before the other House in cases of disagreement in the passage of legislation;

(9) To approve all resolutions deemed proper within the limits prescribed in Article 78.

Article 104: The sessions of the two Houses shall be public, within the limitations prescribed by their rules and regulations.

Article 105: The members of the two Houses represent the entire Nation and should vote in the sole interest of justice and the public good.

Article 106: Senators and Representatives may not be held responsible for votes and opinions expressed in the performance of their duties. For any expression in debate they shall be responsible only to the House to which they belong; they may be called to order by the presiding officer and punished according to the regulations for any offense committed.

Article 107: For forty days before and during the session no member of Congress may be called for any civil or criminal case without the permission of the House to which he belongs. If taken *in flagrante delicto*, he may be arrested; and he shall be placed immediately at the disposition of his House.

Article 108: The President and Vice-President of the Republic, Ministers of State, Councilors of State, Justices of the Supreme Court, the Attorney-General of the Nation, and Governors may not be elected to Congress until six months after they have ceased functioning in their former offices.

Nor may anyone be Senator or Representative for any Department or electoral district wherein he has exercised civil, political, or

military jurisdiction or authority during the three months preceding the election.

Article 109: The President of the Republic may not appoint Senators and Representatives to any office during their terms of office or for one year thereafter except the offices of Minister of State, Councilor of State, Governor, Diplomatic Agent, or Military Chief in time of war.

The acceptance of any of these offices by a member of Congress shall render his seat vacant.

Article 110: Senators and Representatives shall not, either directly or through third persons, enter into any contract with the administration, nor shall they accept a power of attorney for the negotiation of business with the Government of Colombia.

Article 111: Whenever any Senator or Representative shall withdraw from the sessions of Congress and shall be replaced by his Alternate (*Suplente*), the former shall be entitled to his traveling expenses to the capital and the latter to his traveling expenses to his home.

Article 112: No increase in salary or viaticum decreed by Congress shall enter into effect until after the members who have voted the same shall have served out their terms.

Article 113: In cases of temporary or permanent vacancies, the same shall be filled by the respective Alternates (*Suplentes*).

TITLE XI

PRESIDENT AND VICE-PRESIDENT OF THE REPUBLIC

Article 114: The President of the Republic shall be elected for a term of six years by the Electoral Assemblies voting on the same day and in the manner prescribed by law.

Article 115: The President of the Republic shall have the same qualifications as are required for Senators.

Article 116: The President-elect of the Republic shall take office before the President of Congress, and he shall take the following oath: "I swear before God to comply faithfully with the Constitution and laws of Colombia."

Article 117: If for any reason the President should not be able to take office in the presence of the President of Congress, he shall do so before the President of the Supreme Court and, failing in this, before two witnesses.

Article 118: The President of the Republic shall exercise the following powers with relation to the Legislative Power:

- (1) To open and close the ordinary sessions of Congress;
 - (2) To convene Congress in extraordinary session for serious reasons of public convenience and after prior consultation with the Council of State;
 - (3) To present to Congress at the beginning of each session a message relating the acts and measures taken by the administration;
 - (4) To remit at the same time to the House of Representatives the budget of revenues and expenses and a general account of the Treasury;
 - (5) To furnish the two Houses such information as they may request which does not require secrecy;
 - (6) To furnish efficient and effective aid to the two Houses when they request it, placing at their disposal if necessary the entire public force;
 - (7) To co-operate in the enactment of legislation by presenting bills through the Ministers of State, and by exercising the power of veto and approval under the Constitution;
 - (8) To issue decrees having the force of legislative enactments in such cases and with such formalities as are prescribed in Article 121.
- Article 119:* The President of the Republic shall exercise the following powers with relation to the Judicial Power:
- (1) To appoint the Justices of the Supreme Court;
 - (2) To appoint the Judges of the Superior Tribunals from ternaries presented by the Supreme Court;
 - (3) To appoint and remove officers in the Public Ministry;
 - (4) To see that prompt and equal justice is administered throughout the Republic, giving judicial officers all aid necessary for the execution of their decisions which are made in accordance with law;
 - (5) Acting through the proper official of the Public Ministry or a prosecuting attorney appointed for that purpose, to institute proceedings before the competent Tribunal against Governors of Departments and any other national or local administrative or judicial officers for infractions of the Constitution or laws, or for other crimes committed in the performance of their duties;
 - (6) With prior consent of the Council of State, to commute the death sentence to that punishment next in severity in the penal scale, and to grant pardons for political offenses and to reduce the penalties for common offenses in accordance with the laws which regulate the exercise of this power. In no case shall these pardons and commutations relieve the recipients of responsibilities due private persons under the laws.

This power may not be exercised in favor of Ministers of State except upon petition of one of the legislative Houses.

Article 120: The President of the Republic shall exercise the following powers as supreme administrative authority:

- (1) To appoint and remove at pleasure the Ministers of State;
- (2) To promulgate laws, obey them, and see that they are faithfully executed;
- (3) To issue ordinances, decrees, and resolutions necessary for the execution of the laws;
- (4) To appoint and remove at pleasure the Governors;
- (5) To appoint two Councilors of State;
- (6) To appoint all persons in the national service whose appointment is not entrusted to other authorities or corporations in accordance with this Constitution and laws hereafter enacted.

In all cases the President shall have the power to appoint and remove his agents at his pleasure;

(7) To distribute the armed forces and make military appointments subject to the restrictions imposed in Article 98, subsection 5, and in accordance with the formalities prescribed by law for the exercise of this power;

(8) To maintain public order throughout the territory and to re-establish the same when it has been disturbed;

(9) Whenever he may think proper, to direct the military operations as chief of the armies of the Republic. Should he exercise military command beyond the limits of the capital, the Vice-President shall assume charge of the other branches of the administration;

(10) To direct diplomatic and commercial relations with other powers and sovereigns; to appoint at his pleasure Diplomatic Agents and to receive the same and to negotiate treaties and conventions with foreign powers.

All treaties shall be submitted to Congress for approval, and if Congress is in recess such instruments shall be approved by the President with the consent of the Council of State;

(11) To provide for the external security of the Republic defending the independence and honor of the Nation and the inviolability of its territory; to declare war with the consent of the Senate or to make war without such consent when it becomes necessary to repel a foreign invasion; and to conclude and ratify the treaty of peace, reporting his actions with pertinent documents to the next session of Congress;

(12) When the Senate is in recess, to permit the passage of for-

eign troops through the territory of the Republic after prior consultation with the Council of State;

(13) To permit the harboring of foreign warships within the waters of the Nation after prior consultation with the Council of State;

(14) To supervise the collection and administration of the revenues and public moneys and to decree their disbursement according to law;

(15) To regulate, direct, and inspect national public education;

(16) To enter into administrative contracts for the engagement of services or for the performance of public works in accordance with the fiscal laws, and to render account thereof to Congress at its ordinary sessions;

(17) To organize the National Bank and to exercise the necessary supervision over banks of issue and other establishments of credit in accordance with law;

(18) To permit the acceptance of honors and gifts from foreign governments by national officials who may request such permission;

(19) To issue letters of naturalization in accordance with law;

(20) To grant patents for prescribed periods in accordance with law to creators of useful inventions and improvements;

(21) To exercise the right of inspection and supervision over institutions of common utility in order that their revenues may be protected and properly applied and that the will of the founders may be in all respects executed.

Article 121: In case of foreign war or civil commotion the President may, after consultation with the Council of State and with the written consent of all the Councilors, declare that the public order is disturbed and that a state of siege prevails throughout the Republic or a part thereof.

After such a declaration has been made, the President shall be invested with all the powers conferred by law to defend the rights of the Nation or repress the disturbance, and in case such shall not be sufficient he shall use the powers conferred by the law of nations. The extraordinary measures or decrees of a provisional nature within the said limits which the President may take shall be binding, provided they carry the signatures of all the Councilors.

The Government shall declare the restoration of public peace whenever the civil commotion or foreign war has ceased, and shall send to Congress a report of the actions taken. All officers shall be responsible for the abuse of extraordinary powers vested in them.

Article 122: The President of the Republic or whoever is exer-

cising the Executive Power in his stead shall be responsible only in the following cases to be defined by law:

(1) For acts of violence or coercion at elections;

(2) For acts that may prevent the constitutional assembling of the legislative Houses, or that may obstruct them or other public bodies or authorities established by the Constitution in the discharge of their duties;

(3) For acts of high treason.

In the first two cases the penalty shall be no other than removal from office, and if he shall have ceased to exercise his functions, the penalty shall be ineligibility again to occupy the presidency.

No act of the President except the appointment and removal of Ministers of State shall be valid or binding until signed and promulgated by the Minister of the department concerned, which Minister shall then be responsible for the same.

Article 123: The Senate may grant the President temporary leave from office.

For reasons of illness, the President may, for whatever time may be necessary, vacate office by giving prior notification to the Senate, or if that body is in recess, to the Supreme Court.

Article 124: The Vice-President of the Republic shall perform the duties of the executive office during the temporary absence of the President.

In case of permanent absence of the President, the Vice-President shall occupy the executive office until the expiration of the term for which he was elected.

Death and accepted resignation of the President shall be considered cases of permanent absence.

Article 125: Whenever the Vice-President for any reason shall not be able to discharge the duties of the presidency, they shall be performed by the Presidential Alternate (*Designado*) elected by Congress every two years.

Whenever for any reason Congress has failed to elect this official, the person last elected shall continue to act in that capacity.

In the absence of both the Vice-President and the Presidential Alternate, the Executive Power shall be exercised by the Ministers of State and Governors, the latter in the order of the proximity of their residence to the capital of the Republic.

The Council of State shall have the power in each case to designate the Minister who shall fill the executive office.

Article 126: The person in charge of the Executive Power shall

enjoy the same privileges and exercise the same powers accorded the President whose office he fills.

Article 127: The citizen who is elected President of the Republic may not be re-elected for the following term, provided he occupied that office during the eighteen months immediately preceding the new election.

The citizen who may have been called upon to exercise the office of the presidency and who shall have performed its duties within the six months next preceding the new election shall not be eligible to the presidency.

Article 128: The Vice-President of the Republic shall be elected at the same time, by the same Electors, and for the same term as the President.

Article 129: The Vice-President shall have the same qualifications as the President.

Article 130: The Vice-President shall be the presiding officer of the Council of State, and he shall perform such other duties as may be imposed on him by law.

Article 131: In case of the permanent absence of the Vice-President, his office shall remain vacant until the end of his constitutional term.

TITLE XII

MINISTERS OF STATE

Article 132: The number, name, and precedence of the several Ministers of State or of the administrative departments shall be determined by law.

The President of the Republic shall distribute the public business among them according to their several jurisdictions.

Article 133: A Minister shall have the same qualifications as a Representative.

Article 134: The Ministers are the Government's organs of communication with the Congress; they present bills to the Houses, take part in the debates, and advise the President as to approval or disapproval of legislation.

Each Minister shall present to Congress within the first fifteen days of each session a report upon the condition of affairs in his department, and he shall recommend such reforms as experience may suggest.

The Houses may require the attendance of Ministers.

Article 135: The Ministers of State, as superior chiefs of the ad-

ministration, may exercise presidential authority in certain cases as the President may direct. Under their responsibility they may annul, amend, or suspend the acts of their subordinates.

TITLE XIII

COUNCIL OF STATE

Article 136: The Council of State shall be composed of seven members: to wit, the Vice-President of the Republic, who shall be the presiding officer, and six voting members chosen in accordance with this Constitution.

The Ministers of State may participate in the deliberations of the Council, but they shall have no vote.

Article 137: The office of Councilor is incompatible with any other effective public employment.

Article 138: The Councilors of State shall hold office for four years, one half being elected every two years.

Article 139: For the performance of its duties, the Council shall be divided into sections in such manner as the law may direct or as the Council itself may ordain.

Article 140: The law shall determine the number of Alternates (*Suplentes*) for Councilors and the rules regarding the manner of their appointment, service, and responsibilities.

Article 141: The Council of State shall have the following powers:

(1) To act as the supreme consultative body for the Government in matters of administration, in which case they shall be heard in all matters determined by the Constitution and laws. The opinions of the Council are not binding on the Government except in a vote for the commutation of the death penalty;

(2) To prepare bills and codes for consideration by the two Houses and to propose amendments deemed necessary in all legislative matters;

(3) To decide without appeal administrative controversies (*cuestiones contencioso-administrativo*), provided this jurisdiction, whether it is original and exclusive or appellate, shall be established by law.

In this case the Council shall have a section to which such controversies may be referred, as well as its own attorney, both to be provided by law;

(4) To keep a register of opinions and resolutions, except the secret business of the Council as long as secrecy is deemed necessary,

and to transmit a copy thereof through the Government to the Congress within fifteen days after the opening of the regular sessions;

(5) To establish regulations for the conduct of its business with the obligation that as many sessions shall be held in each month as may be necessary to discharge its business;

And all such other powers as may be provided by law.

TITLE XIV

THE PUBLIC MINISTRY (MINISTERIO PÚBLICO)

Article 142: The Public Ministry shall be exercised under the supreme direction of the Government acting through an Attorney-General of the Nation and the prosecuting attorneys of the Superior District Tribunals and other officers designated by law.

The House of Representatives may exercise the functions of a prosecuting attorney in certain cases.

Article 143: The officers of the Public Ministry shall defend the interests of the Nation, promote the execution of the laws and judicial sentences and administrative orders, supervise the official conduct of public officers, and prosecute those guilty of crimes and misdemeanors that disturb the social order.

Article 144: The term of office of the Attorney-General of the Nation shall be three years.

Article 145: The Attorney-General of the Nation shall have the following special functions:

(1) To see that all public officers in the service of the Nation properly discharge their duties;

(2) To arraign before the Supreme Court all officers who are to be tried by that court;

(3) To see that all other officers of the Public Ministry faithfully discharge their duties and to enforce their responsibility for misconduct;

(4) To appoint and remove at pleasure his immediate subordinates;

And all other functions which the law may assign.

TITLE XV

ADMINISTRATION OF JUSTICE

Article 146: The Supreme Court shall be composed of seven Justices.

Article 147: Justices of the Supreme Court shall hold office during good behavior. The law shall define cases of improper conduct and

the procedures and formalities to be observed in so declaring them by judicial sentence.

Any Justice who accepts another office from the Government shall be considered to have vacated his justiceship.

Article 148: The President of the Supreme Court shall be chosen every four years by the court.

Article 149: There shall be seven Alternates (*Suplentes*) to fill any temporary vacancies occurring on the bench. Whenever a permanent vacancy shall occur either by death, resignation, or under a constitutional provision, or by judicial decree, a new appointment shall be made.

Article 150: Justices of the Supreme Court shall be Colombians by birth in the full exercise of the rights of citizenship; they shall be thirty-five years of age; they shall have been Judges in one of the Superior District Tribunals or Judges in a tribunal of one of the former States, or they shall have creditably pursued for at least five years the profession of law or have been professors of jurisprudence in some public institution.

Article 151: The Supreme Court shall exercise the following functions:

- (1) To hear appeals according to law;
- (2) To settle questions of competency arising between two or more District Tribunals;
- (3) To take cognizance of all cases in which the Nation may be a party, or which involve a controversy between two or more Departments;
- (4) To decide finally upon the validity of all legislative acts that may have been objected to by the Government for alleged unconstitutionality;
- (5) To decide, in accordance with law, upon the validity or nullity of ordinances enacted by the Departments as may have been suspended by the Government or denounced before the Tribunals as subversive of civil rights;
- (6) To try the high national officers who have been accused before the Senate for offenses made actionable before the Court by Article 97;
- (7) To take cognizance of all cases which for questions of responsibility, violation of the Constitution or laws, or malfeasance in office may be instituted against diplomatic and consular agents of the Republic, Governors, Judges, Commanders or Generals-in-Chief of the national forces, and the heads of the principal treasury offices of the nation;
- (8) To take cognizance of all cases affecting Diplomatic Agents

accredited to the Government of the Nation as provided for in international law;

(9) To take cognizance of all cases relating to the navigation of the sea or of navigable rivers flowing through the territory of the Nation;

And all other functions that may be assigned by law.

Article 152: The Court shall appoint and remove at pleasure its subordinate officers.

Article 153: In order to facilitate the prompt administration of justice, the national territory shall be divided into judicial districts in each of which there shall be a Superior Tribunal the composition and functions of which shall be determined by law.

Article 154: In order to be a Judge in the Superior Tribunals one must be a citizen in full exercise of his rights, must be at least thirty years of age, and for at least three years must have exercised judicial functions or have creditably engaged in the practice of law or have taught law in a public institution.

Article 155: The provisions contained in Article 147 shall apply to Judges of the Superior Tribunals. Said Judges shall be responsible to the Supreme Court in the manner determined by law for all malfeasance in office and for the commission of all acts which compromise the dignity of their posts.

Article 156: The inferior courts shall be organized and their functions and the terms of their Judges shall be determined by law.

Article 157: To be Judge of an inferior court one must be a citizen in the full exercise of his rights, learned in the law, and of good reputation.

The second requisite herein prescribed shall not be required of Municipal Judges.

Article 158: Judges of inferior courts shall be responsible to their respective Superior Tribunals.

Article 159: Judicial offices shall not be cumulative, and they are incompatible with the exercise of any other office of emolument or with any participation in the practice of law.

Article 160: Justices and Judges shall not be suspended from office except in the cases and in accordance with the formalities prescribed by law, nor otherwise than by a judicial decree. Nor may they be transferred to other offices without vacating their posts.

Salaries of Judges shall not be abolished or diminished in such a manner as to prejudice those in office when such action is taken.

Article 161: Every sentence shall be accompanied by an opinion.

Article 162: Juries for the trial of criminal cases may be instituted by law.

Article 163: Courts of Commerce may be established.

Article 164: The law may establish the jurisdiction for the review of administrative decisions (*la jurisdicción contencioso-administrativa*), instituting tribunals which shall take cognizance of all controversies occasioned by the administrative acts of the several departments, giving the Council of State the power to decide all conflicts of jurisdiction between the several administrative departments.

TITLE XVI

PUBLIC ARMED FORCES

Article 165: All Colombians shall be required to bear arms when public necessity requires that they should do so in defense of the national independence and institutions of the country.

All exemptions from military service shall be determined by law.

Article 166: The Nation shall maintain a standing Army for its defense. The law shall determine the system of replacements in the Army as well as all matters relating to the promotion, rights, and duties of soldiers.

Article 167: Whenever the law shall fail to fix the size of the standing Army, it shall continue as fixed by Congress for the preceding biennium.

Article 168: The Army is not a deliberative body. It shall not assemble except by order of legitimate authority, or address petitions except in the interest of its better service and morale, and that in accordance with the laws governing the same.

Article 169: Soldiers shall not be deprived of their rank, honors, and pensions except in the cases and manner provided by law.

Article 170: Courts-Martial or Military Tribunals shall take cognizance, under provisions of the Military Penal Code, of all offenses committed by persons in active service and in regard to said service.

Article 171: A national militia may be organized and established by law.

TITLE XVII

ELECTIONS

Article 172: All citizens shall directly elect members of Municipal Councils and Deputies to the Department Assemblies.

Article 173: Citizens who can read and write, or who have an

annual income of five hundred pesos or real property valued at fifteen hundred pesos may vote for Electors and vote directly for Representatives.

Article 174: The Electors shall vote for the President and Vice-President of the Republic.

Article 175: Senators shall be elected by Department Assemblies; but in no case shall members of said assemblies be elected who may have belonged thereto within one year of the date of election.

Article 176: There shall be one Elector for each one thousand inhabitants.

There shall also be one Elector for each District that may contain less than one thousand inhabitants.

Article 177: The Electoral Assemblies shall be chosen for each presidential election, and the legal members thereof shall not be deprived of the right of exercising their functions unless their rights of citizenship have been suspended or forfeited by judicial decree.

Article 178: Each Department shall be divided into a number of electoral districts equal to the number of Representatives to which it is entitled.

The law shall make provision for dividing the Departments as mentioned in the preceding paragraph, and in the absence of such provision, the Government shall provide for the same.

Municipal Districts containing more than fifty thousand inhabitants shall be electoral districts and shall elect one or more Representatives according to their population.

In case the fractions of population over and above the number necessary for a Representative shall when added together amount to more than twenty-five thousand persons, they shall elect one additional Representative. The law shall fix rules for the election of such additional Representatives.

Article 179: Suffrage shall be exercised as a constitutional function. The person who votes and elects does not thereby impose any obligation on the candidate, nor does he confer any mandate upon the officer-elect.

Article 180: There shall be election judges (*jueces de escrutinio*) vested with the authority and character of regular judges (*jueces de derecho*) to decide all questions concerning the validity of the elections themselves or of the votes cast therein.

These judges shall be responsible for their decisions, and they shall be appointed in the manner and for the term provided by law.

Article 181: The law shall provide whatever else may be necessary in connection with the elections and their canvassing, taking care that

these two functions shall be separate; it shall also define the crimes which menace the correctness and freedom of voting and shall establish a proper penal sanction.

TITLE XVIII

DEPARTMENT AND MUNICIPAL ADMINISTRATION

Article 182: For purposes of administration the Departments shall be divided into Provinces and these in turn divided into Municipal Districts.

Article 183: In each Department there shall be an administrative body known as the Department Assembly, which shall be composed of one Deputy for each twelve thousand inhabitants.

This numerical basis for Deputies may be altered by law.

Article 184: The Assemblies shall meet in ordinary session every two years in the capital of the Department.

Article 185: The Assemblies shall have power, by means of ordinances and with the resources of the Department, to direct and promote primary education and charity, established industries and the introduction of new ones, immigration, importation of foreign capital, colonization of lands belonging to the Department, opening of roads and canals, construction of railroads, exploitation of the forests of the Department, improvement of river navigation, local police, supervision of district revenues, and everything relating to local interests and improvement.

Article 186: Department Assemblies also have the power to erect or abolish Municipalities in accordance with whatever size population the law may determine and to extend or contract municipal boundaries, always with a view to local interests. Should any neighborhood oppose such change, the conflict shall be resolved by Congress.

Article 187: The Department Assemblies, by authority of Congress, may exercise functions other than those especially conferred by law.

Article 188: The property, rights, revenues, and actions which by law or decree of the national government or by any other title belonged to the former sovereign States shall henceforth belong to the respective Departments so long as they have legal existence.

The real property specified in Article 202 is excepted herefrom.

Article 189: Every two years the Department Assemblies shall vote a budget of revenues and expenses of the Department and shall

appropriate the necessary sums to cover these expenses in accordance with law.

Article 190: To cover expenses of departmental administration, the Department Assemblies may levy taxes under the conditions and within the limits established by law.

Article 191: Ordinances enacted by the Assemblies shall be enforceable and binding as long as they are not suspended by the Governor or by judicial authority.

Article 192: Individuals prejudiced by acts of the Assemblies may resort to the competent Tribunal; in order to prevent a grave injury the latter shall be able to suspend the act in question.

Article 193: In each Department there shall be a Governor who shall exercise the Executive Power therein as the agent of the central administration on the one hand and, on the other, as the chief of departmental administration.

Article 194: Governors shall be appointed for a term of three years and may be reappointed.

Article 195: The Governor shall be vested with the following powers:

(1) To execute and cause to be executed in the Departments the orders of the Government;

(2) To direct the administrative action in the Department, appointing and removing his agents, amending or revoking their acts, and taking all measures necessary for the conduct of the branches of administration;

(3) To be spokesman for the Department, representing it in political and administrative matters;

(4) To aid in the administration of justice as determined by law;

(5) To supervise and protect official corporations and public establishments;

(6) To approve the ordinances passed by the Department Assemblies in accordance with law;

(7) To suspend on his own initiative or upon petition of the party aggrieved, and by an order setting forth his reasons therefor, and within ten days after issuance of the order, such ordinances of the Assemblies as have been enacted without authority or in violation of law or in contravention of the rights of third parties; he shall submit such suspension to the Government for its ratification or rejection;

(8) To review the acts of the Municipalities and of the Mayors (*Alcaldes*), suspending the former and revoking the latter by orders

setting forth the reasons therefor, which reasons should be only for incompetency of the authorities or for illegality of their acts.

And such other powers as may be conferred by law.

Article 196: Governors shall be subject to executive and judicial responsibility. They shall be removable by the Government and answerable to the Supreme Court for offenses committed in the exercise of their functions.

Article 197: The Governor may call upon the armed forces for aid, and the military chief shall obey his instructions except when they conflict with special regulations issued by the Government.

Article 198: In each municipal district there shall be a popularly elected body known as the Municipal Council.

Article 199: The Municipal Councils shall enact such resolutions and local regulations as may be necessary for the proper administration of the districts; they shall, in accordance with the ordinances of the Assemblies, levy taxes and determine local expenditures; they shall keep an annual register of the population; they shall take a census whenever required by law; and they shall perform such other duties as may be assigned by law.

Article 200: The administrative head of the Municipality shall be the Mayor (*Alcalde*), an officer having the double character as agent of the Governor and agent of the people.

Article 201: The Department of Panamá shall be subject to the direct authority of the Government, and it shall be administered by specially enacted laws.

TITLE XIX

FINANCE (DE LA HACIENDA)

Article 202: The following property belongs to the Republic of Colombia:

(1) The possessions, revenues, real property, securities, taxes, and shares which belonged to the Colombian Union on April 15, 1886;

(2) The uncultivated domain, mines, and salt works which belonged to the States the property in which now vests in the Nation, without prejudice to the rights granted to third parties by the said States or granted to the States by the Nation under rights of indemnification.

(3) The mines of gold, silver, platinum, and precious stones which lie within the national territory, without prejudice to the rights acquired under previous laws by discoverers and exploiters of any of them.

Article 203: The Republic shall be responsible for the foreign and

domestic debts that have been recognized or that may hereafter be recognized and for the expenses of the national public service.

The law shall determine the order and manner of satisfying these obligations.

Article 204: No indirect tax or any increase in such tax shall take effect until six months after the promulgation of the law establishing the same.

Article 205: No alteration in the customs duties shall take effect within ninety days after the approval of the law enacting such alteration; any increase or decrease of import duties shall take effect by tenths during the following ten months.

This provision and that of the preceding article shall not limit the extraordinary powers with which the Government may be invested.

Article 206: Each Ministry shall prepare biennially an estimate of expenditures and submit the same to the Treasury, which shall prepare a general budget for the Nation and submit it to the Congress for approval together with a budget of the revenues to meet such proposed expenditures.

When Congress does not vote the budget for the fiscal biennium, the budget of the preceding fiscal biennium shall continue in force.

Article 207: No expenditure of public money shall be made without authorization by Congress, by Department Assemblies, or by the Municipalities; nor shall any appropriation be diverted from the object for which it was made.

Article 208: When in the judgment of the Government it becomes necessary to make an unforeseen expenditure and the Houses are in recess and have not voted the appropriation or have voted an insufficient amount, a supplemental or extraordinary credit may be made by the particular Ministry.

These credits may be authorized by the Council of Ministers upon proof of their necessity and after consultation with the Council of State.

Congress shall have the power to legalize these credits.

The Government may petition Congress for credits in addition to those provided in the budget of expenses.

TITLE XX

CONCERNING THE AMENDMENT OF THIS CONSTITUTION AND THE ABROGATION OF THE FORMER ONE

Article 209: This Constitution may be amended by a legislative act debated and adopted after three readings in the usual manner by

Congress, submitted by the Government to the next session for its definitive action, and by it newly debated and finally adopted by a two-thirds vote of both Houses.

Article 210: The Constitution of May 8, 1863, which is inoperative by reason of accomplished facts, is hereby abolished; in the same manner, all legislative provisions in conflict with this Constitution are hereby repealed.

TITLE XXI

TRANSITORY PROVISIONS

Article A: The first presidential term shall begin on the seventh of August of this year.

The first constitutional term for the Vice-President of the Republic and for the Presidential Alternate (*Designado*) shall begin on the same day.

The first constitutional term for the Councilors of State and for the Attorney-General of the Nation shall begin on the first of September.

The new Justices of the National Supreme Court shall take office on the first of September of this year.

Article B: The first session of Congress shall open on July 20, 1888.

Article C: As soon as the present Constitution is sanctioned, the National Convention of Delegates shall assume the legislative functions which by this Constitution are given to the Congress as a body and to the Senate and House of Representatives separately. Among the functions which it shall assume immediately is that one which is provided for in Article 77.

Article D: If called into extraordinary session by the Government before the date set for the first session of Congress, the National Constituent Convention shall reassemble for the purpose of exercising legislative functions.

Article E: The election of those Councilors of State whose election is made by the Senate and House of Representatives shall be made by the National Convention in two separate ballotings, voting in each one for two individuals. He who receives the greatest number of votes in each balloting shall be declared elected for a term of four years, and he who receives the second greatest number shall be declared elected for a term of two years. In any event, ties shall be decided by lot.

The two Councilors who are chosen by the Government shall be named simultaneously, and in the presence of the Council of Ministers

lots shall be drawn to determine which one shall have a term of four years and which one a term of two years.

Article F: In order to carry out its second function the Council of State may call in one or two persons learned in law. These auxiliary Councilors shall cease to function on July 20, 1888.

Article G: The taxes which were established by the former States of the Union shall continue in force in the respective Departments so long as the Legislative Power does not provide otherwise.

Revenues destined ultimately for the service of the Nation which were established by executive decree are excepted.

Article H: Until the Legislative Power provides otherwise, State legislation shall continue in force in each Department.

The National Constituent Convention, having once assumed the character of a legislative body, shall give attention to the enactment of a law relative to the adoption of codes and to the systematization of national legislation.

Article I: Laws of the former States which were suspended by the Federal Supreme Court and those not unanimously settled by that court shall be sent to the Convention of Delegates for a definitive decision as to their validity.

Article J: If before the enactment of the law referred to in Article H, any individual or individuals should be accused of any of the crimes mentioned in Article 29, they shall be tried in accordance with the code of the former State of Cundinamarca which was enacted October 16, 1858.

Article K: The Government shall be empowered to prevent and punish abuses of the press until a law on that subject has been enacted.

Article L: Acts of a legislative character decreed by the President of the Republic before this Constitution is adopted shall continue in force even though contrary to the Constitution so long as they have not been expressly repealed by the legislative body or revoked by the Government.

Article M: The President of the Republic shall nominate the first Justices of the Supreme Court and the Judges of the Superior Tribunals and submit these nominations to the National Convention for approval.

Article N: After the National Convention has assumed the character of a legislative body, permanent vacancies therein shall be filled by persons appointed by the Governors of the Departments.

Article O: This Constitution shall enter into force for the High National Powers on the day in which it is sanctioned, and for the Nation, thirty days after its publication in the Official Gazette.

Done in Bogotá on the fourth day of August 1886.

President of the National Constituent Convention and Delegate for the State of Cauca: JUAN DE DIOS ULLOA.

Vice-President of the National Constituent Convention and Delegate for the State of Cundinamarca: JOSÉ MARÍA RUBIO FRADE.

Delegates for the State of Antioquia: *Simón de Herrera* and *José Domingo Ospina Camacho*. Delegates for the State of Bolívar: *José M. Samper* and *Juan Campo Serrano*. Delegates for the State of Boyacá: *Carlos Calderón Reyes* and *Francisco Mendoza Pérez*. Delegate for the State of Cauca: *Rafael Reyes*. Delegate for the State of Cundinamarca: *Jesús Casas Rojas*. Delegate for the State of Magdalena: *Luis M. Robles*. Delegates for the State of Panamá: *Miguel Antonio Caro* and *Felipe F. Paúl*. Delegates for the State of Santander: *Guillermo Quintero Calderón* and *Antonio Carreño R.* Delegates for the State of Tolima: *Acisclo Molano* and *Roberto Sarmiento*.

Secretary: *Julio A. Corredor*.

Secretary: *Victor Mallarino*.

CONSTITUTION
OF THE
REPUBLIC OF COLOMBIA
(Codification of 1936)

Codification of 1936

HISTORICAL BACKGROUND

THE "REGENERATION" MOVEMENT led by Rafael Núñez culminated in the adoption of the Constitution of 1886. Núñez had formed the National party by uniting the Conservatives and Independents (moderate Liberals), and this coalition had elected him to the presidency for his second term (1884-1886).

As pointed out in the introduction to the Constitution of 1886, the Radical party revolted late in 1885. To meet this threat, Núñez proclaimed a state of siege and assumed extraordinary powers. Political conditions in Colombia had been getting progressively worse under the Constitution of 1863, and the revolt of the Radicals was the last straw. Núñez and his National party, convinced that the Constitution of 1863 was inadequate for the necessities of the time, declared it to be no longer in force. A constituent assembly, composed entirely of Conservatives and Independents, met and drew up the Constitution of 1886. With the adoption of this constitution, the Radical party passed from the scene of Colombian politics. One faction or another of the Conservative party was in control of the government down to the election of 1930.

Núñez, the first President under the Constitution of 1886, retired from office before his term was completed; and Carlos Holguín succeeded him on August 7, 1888. During Holguín's administration a split in the Conservative ranks which was to become more serious began to make itself evident. This breach was widened in the election of 1892. Núñez and General Marceliano Vélez, a leader in the Conservative party, had a disagreement serious enough to cause a division in the party which lasted for many years. As a result of this disagreement, and in part because of it, Núñez and Dr. Miguel A. Caro were elected President and Vice-President respectively, instead of Núñez and Vélez.

Núñez was in Cartagena at the time of the election. He remained in that city, allowing his Vice-President to take over the presidential functions in his absence. Núñez died September 18, 1894, without ever having entered upon the discharge of his presidential duties during the term for which he was elected. His death deprived the National party of its most effective leader. He had been able to hold the Conservatives and Independents together; he had been able to keep the party on a middle course.

Vice-President Caro was unable to prevent a schism. The agitation within his own party encouraged the Liberals once more to assume the offensive. Under attack from two directions, Caro instituted a rigorous censorship of the press, banished some important persons, and imprisoned others. These and other repressive measures incited the Liberals to open rebellion in January, 1895. The last of the rebel troops surrendered on March 15 of that year.

The revolt of 1895 proved to be merely a "feeling-out" fight for the revolt of 1899. In 1898 Dr. Manuel A. Sanclemente was elected Caro's successor. In his absence the Vice-President, Dr. José Manuel Marroquín, took charge of the office on August 7, 1898. Marroquín was a tolerant and conciliatory man who advocated various types of progressive legislation. His program won him many friends in the country. In short, he did much to heal the wounds of the revolt of 1895.

Several months after the election President Sanclemente came to Bogotá to take over the government. He was installed in office on November 10, 1898. He did not approve of the liberal and progressive program which Marroquín had instituted. He advocated caution and delay, and made it clear immediately that there would be a change in policy. Sanclemente, a man advanced in years and in very poor health, was not able to remain long in office. After a very short time in the capital, he left for Anapoima because of his health.

The physical weakness of the President as well as the financial difficulties into which the government had fallen convinced the Liberals that the time was at hand to forestall the trend to the extreme right which seemed to be developing. In July, 1899, the longest and bitterest revolt began. The Government was not able to declare that public order had been re-established and the revolt suppressed until June, 1903. Early in the civil war (July 31, 1900) a faction of the Conservative party deposed President Sanclemente and confined him to prison. Vice-President Marroquín took charge for the remainder of the term.

General Rafael Reyes was elected in 1904. During his administration there was much material progress in Colombia, but his methods were of the essence of Caesarism. "Reyes figures, without doubt, among the few efficient magistrates which the republic has had, as his various achievements prove. . . ." However, he "possessed the temperament of autocrats, of dictators; he had the audacity and astuteness of Mosquera, but not his talents or learning."¹ Finding it difficult to

¹ Jesús María Henao and Gerardo Arrubla, *History of Colombia* (trans. J. Fred Rippy; Chapel Hill, N. C., 1938), p. 523.

bend Congress to his will, he created an unconstitutional body known as the National Assembly, composed of three deputies from each Department. For all practical purposes these deputies were chosen by the Governors, who in turn had been appointed by Reyes. To this body Reyes submitted his decrees and constitutional amendments for approval. In this manner he circumvented Congress. Brief mention should be made of several of the more important amendments which were adopted by Reyes and his National Assembly.

One of the first of these was the amendment of March 30, 1905.² This act abolished the offices of Vice-President and Presidential Alternate (*Designado*). It provided that Ministers of State and Governors of Departments should succeed to the presidency in cases of vacancy. It further provided that, in Reyes's case alone, the presidential term should be ten years instead of six. The Council of State was abolished early in 1905 by an amendment which repealed all the provisions in the Constitution of 1886 dealing with this institution.³ Other amendments applied to Congress, which continued in existence in spite of the establishment of the National Assembly. These amendments had to do chiefly with changes in the terms of office of members of Congress and in the sessions of Congress.⁴

Opposition to Reyes's methods of government crystallized during the debates on the treaty between the United States and Colombia concerning Panamá which was signed in Washington January 9, 1909. Dissatisfaction with the treaty furnished a rallying point for the opponents of the administration. The disaffected elements of both the Conservative and Liberal parties united to form the Republican Union, or Republican party as it was sometimes called. By March, 1909, popular manifestations of disapproval had reached such proportions that President Reyes resigned on the thirteenth and named General Jorge Holguín as his successor. The National Assembly refused to accept the resignation, and Reyes continued in office a little longer. After making some effort to placate the opposition for several weeks, Reyes concluded that it was impossible to do so and left the country in June, 1909. General Holguín took over the government and called Congress into session. On August 3, 1909, Congress elected General

² Legislative Act No. 5 of 1905 (República de Colombia [Ministerio de Gobierno], *Constitución política de la República de Colombia*, Bogotá, 1937, pp. 122, 123).

³ Legislative Act No. 10 of 1905 (*ibid.*, p. 124).

⁴ Legislative Act No. 8 of 1905 (*ibid.*, p. 123); Legislative Act No. 1 of 1908 (*ibid.*, p. 124); and Legislative Act No. 4 of 1909 (*ibid.*, p. 127).

Ramón González Valencia as President to serve out the remainder of Reyes's term, which ended August 7, 1910.

Being aware that Reyes's methods, not to mention his amendments, had disrupted the constitutional pattern of the Republic, President González issued a decree in the latter part of 1909 calling for a national constituent assembly charged with the task of formulating ways and means of correcting this situation. The assembly met on May 15, 1910. It was composed of prominent members of the Republican Union. This assembly adopted many important amendments, which are to be found in Legislative Act No. 3 of 1910.⁵ Several of these merit passing mention.

The office of Presidential Alternate (*Designado*) was re-established, although that of Vice-President was not. Congress was given the constitutional mandate to select annually the First Presidential Alternate and the Second Presidential Alternate. These officials were to discharge the presidential functions in case of vacancy in that office. Senators were elected on the basis of the population in each Department instead of three for each Department, and thus another vestige of federalism, i.e., equality of representation in the Senate, was ended. The term of office for Senators was reduced from six to four years, and that of Representatives from four to two years. Congressional sessions were to be annual instead of biennial. The term of office for President was reduced from six to four years. It was further provided that the President was to be elected by a direct vote of qualified voters, whereas formerly he had been elected indirectly by electoral assemblies.

Early in the administration of President José Vicente Concha an amendment was adopted adding an important institution to the constitutional organization of the country. President Concha took office August 7, 1914, and the amendment entered into force September 10, 1914. It was really a product of the administration of President Carlos E. Restrepo that came to fruition in the first month of the administration of his successor.

The Constitution of 1886 had provided for a Council of State and had assigned certain legislative and executive functions to it. The judicial function of settling administrative disputes, however, was conditioned upon the establishment of this jurisdiction. In other words, it was provided that the Council of State was "to decide without appeal administrative controversies, *provided this jurisdiction . . . shall be established by law*" (Art. 141[3]; italics inserted). The jurisdiction was not established.

⁵ For text, see *ibid.*, pp. 127-138.

In 1905 Reyes had abolished the Council of State. The amendment of 1914 not only re-established it, but also gave the council jurisdiction over administrative disputes. All former functions were restored, and in addition to this the council was given the power "to exercise, in accordance with rules established by law, the functions of Supreme Administrative Tribunal."⁶ The Council of State has had this very important function ever since. The development of the organization and jurisprudence of the council as an administrative court has been greatly influenced by French experience in this field.⁷ The creation of a Tribunal of Conflicts in 1945 contributes still more to the parallelism.

The Conservative party continued in power with very little effective competition from the Liberals until 1930. During the 1920's Colombia experienced a great influx of foreign capital for public improvements and for private investment in various Colombian enterprises. The volume of these investments continued increasing year after year until many people were fearful lest the foreign capitalists come to dominate the country and its government. This naturally led to accusations of dishonesty, fraud, and graft, which in turn contributed to the political insecurity of the Conservatives. Mounting popular disapproval and suspicion of the government, combined with the economic crisis of 1929, gave the Liberals their first real chance of success in many years. In what is conceded to have been a very fair and orderly election the Liberals won in 1930; their leader, Enrique Olaya Herrera, was installed as President on August 7 of that year. He was the first Liberal to hold this office since the Constitution of 1886 had been adopted. He was a moderate Liberal and a member of the short-lived Republican Union that had been formed to combat the dictatorship of Reyes. Dr. Olaya Herrera was elected by his own party, aided by some Conservative elements which had become dissatisfied with the manner in which their party had been governing the country in the last few years prior to the election. His administration may be characterized as moderately progressive, one designed to hold the moderate Liberals and moderate Conservatives together.

President Olaya Herrera was succeeded by another Liberal in 1934. Dr. Alfonso López Pumarejo, elected for the term 1934-1938, gave Colombia an administration more daring and unconventional than that of Olaya Herrera. During López's administration an extensive series of amendments to the Constitution in which the liberal

⁶ Amendatory Act of September 10, 1914, Art. 6, subsection 3 (*ibid.*, p. 139).

⁷ See William Marion Gibson, "The Colombian Council of State: A Study in Administrative Justice," *Journal of Politics*, V (Aug., 1943), 291-311.

policies of his government are reflected was made.⁸ Dr. López's administration has been likened to the "New Deal" administration of President Roosevelt in this country.

POLITICAL ORGANIZATION

Following the plan employed in preceding introductions, attention is now turned to a discussion of the constitutional text which follows. It is to be noticed that the two remaining texts translated below are designated as "codifications" rather than "constitutions."

Individual amendments, as adopted, are published in the *Session Laws* along with ordinary legislation. Amendments are entitled "Legislative Acts" (*Actos legislativos*) and occasionally "Amendatory Acts" (*Actos reformatorios*), while ordinary legislation is called "Laws" (*Leyes*). Whenever the number of amendments becomes so large as to create confusion and uncertainty because of their being scattered through the various volumes of *Session Laws*, Congress orders the Council of State to collect the amendments and publish them along with the unamended provisions of the constitution. This codification is then the official text of the constitution.

It would be inaccurate to entitle the following texts "Constitution of 1936" and "Constitution of 1945." They are not new constitutions replacing old ones. That is to say, the Constitution of Colombia is still that of 1886 as subsequently amended. The Codification of 1936 is the official text of the constitution as amended between 1886 and 1936, while the Codification of 1945 officially incorporates the amendments adopted between 1936 and 1945.

There are several reasons why more amendments have been added to the Constitution of Colombia than to the Constitution of the United States of America, for example. In the first place, the amendment process itself is much less complicated and time consuming. The process is executed in its entirety by Congress following a procedure somewhat more complex than that employed for ordinary legislation. It seems an understatement to say that it is rather probable that more than twenty-one amendments would have been added to the Constitution of the United States since 1789 had a similar process been provided in our constitution. Recollection of the events of the past decade in particular would seem to furnish some justification for this idea.

Our concept of a constitution is quite different from that prevailing in Colombia. To us, it is a basic plan of government which must not

⁸ These amendments are found in Legislative Act No. 1 of 1936 (República de Colombia [Ministerio de Gobierno], *Constitución política de la República de Colombia*, Bogotá, 1937, pp. 144-151).

be changed even in detail except in cases of inescapable need. For this reason, our amendment process is designed to prevent Congress from having the power of final decision in the matter. To Colombians, a constitution is a code rather than a sacrosanct document drawn up by inspired men for all time, so perfect that the necessity for alterations is reluctantly admitted and met with apprehension. It does not occur to a Colombian, nurtured in the tradition of code law, to look upon the adoption of an amendment as a breaking of faith with the past. Therefore he is not disturbed when his representatives in Congress adopt an amendment to his constitution. To him this is a normal and proper congressional function. All of which is to say that the Colombian Congress not only has the power to amend the Constitution, but that, when doing so, it does not labor under the shadow of popular antipathy to such action. Under these circumstances it becomes quite evident why there have been many more amendments added to the Colombian Constitution than to that of the United States.

Although the Codification of 1936 makes no great alterations in the powers of Congress, some significant changes in the composition and sessions of that body are to be found. Whereas formerly Congress met in ordinary session every two years, the Codification of 1936 provided for an annual ordinary session. Moreover, it was a "split-session," the first part opening on February 1 and running for 90 days, the second opening on July 20 and running for 120 days (Art. 62).

Under the Constitution of 1886 the Senate was composed of three Senators from each Department, indirectly elected by Department Assemblies for terms of six years. In the Codification of 1936 it was provided that Senators were to be elected on the basis of the population of the Departments and for terms of four years (Arts. 86 and 88). The indirect method of election was retained (Arts. 174 and 175). The property or income qualification for election was also continued in force (Art. 87). The term of Representatives was reduced from four to two years (Art. 95).

The more important changes in the provisions dealing with the presidency relate to tenure and election. The term of office was reduced from six to four years. But of greater significance is the fact that the direct method of election adopted in 1910 was retained (Art. 109). The powers of the President, including the authority to assume extraordinary powers, were virtually the same in 1936 as in 1886. The property or income qualification was also retained (Art. 110).

The amendment of 1914, which re-established the Council of State and made it the Supreme Administrative Tribunal, was incorpo-

rated in its entirety in this Codification (Title XIII). The nature of this amendment is discussed above.

The more important changes made in the judiciary provisions of the Codification of 1936 were concerned with tenure, method of selection, and expansion of the function of judicial review. In 1886 Justices of the Supreme Court and Judges of the Superior Tribunals held office during good behavior. Their terms were reduced to five and four years respectively (Art. 144).

In 1886 Justices of the Supreme Court were appointed by the President with approval of the Senate (1886: 98[4] and 119[1]). The Codification of 1936 provided that four of the Justices be selected by the Senate from ternaries presented by the President (Art. 92), and the remaining five be selected by the House of Representatives from similar ternaries (Art. 96[3]). Formerly Judges of the Superior Tribunals were selected by the President from ternaries submitted by the Supreme Court (1886: 119[2]). Article 155 of the Codification of 1936 empowered the Supreme Court to select these Judges from ternaries presented by the Assembly of the Department in which the Judge was to function. This gave the locality in which the Judge was to sit a greater voice in his selection.

The expansion of the scope of judicial review which had been made in 1910 was retained in the Codification of 1936. Under the terms of the Constitution of 1886, the Supreme Court had the power "to decide finally upon the validity of all legislative acts that have been objected to by the Government for alleged unconstitutionality" (1886: 151[4]; italics inserted). The Supreme Court was also given the power "to decide . . . upon the validity and nullity of [such] ordinances enacted by the Departments as may have been suspended by the Government or denounced before the Tribunals as subversive of civil rights" (1886: 151[5]; italics inserted). The court then passes upon the constitutionality of acts of Congress which have been questioned by the Government, and upon acts of Department Assemblies which have been suspended by the Government or questioned in court by private individuals as being subversive of civil rights.

The Codification of 1936 gave the courts power to decide upon legislative acts which were objected to as unconstitutional not only by the Government but also "by any citizen" (Art. 149; see also Arts. 150, 190, 191, 192[7], 196, and 197). In other words, the Supreme Court and the Superior Tribunals were expressly given the power to review legislation enacted by Congress, Department Assemblies, and Municipal Councils when such legislation was questioned by the Government or by any citizen.

In concluding this introduction, mention should be made of several amendments dealing with social matters that were incorporated in the Codification of 1936. These were adopted during the administration of President López. It was provided that labor "shall enjoy the special protection of the State" (Art. 40). This has been looked upon not merely as an authorization to enact labor legislation, but rather as a provision imposing the responsibility to enact such legislation. On the basis of this article, Congress has enacted a workmen's compensation law, created machinery for arbitration and conciliation of labor disputes, provided for a forty-eight hour week, and set up a system of unemployment benefits. "The right to strike is guaranteed except in the public services" (Art. 44).

Several new provisions for the regulation of business were incorporated in the codification. The Government was given the power to intervene in the exploitation of private business and industries "for the purpose of rationalizing production, distribution, and consumption, or to give labor the just protection to which it has a right" (Art. 28). However, "Laws passed in the exercise of the power . . . require the approval of an absolute majority of the members of both Houses." This latter provision has been interpreted by the Colombian Supreme Court to mean that Congress, and not the Government, has the power to decide upon the methods whereby this intervention may be made. Furthermore, an extraordinary majority is required when Congress is exercising this power.⁹

Article 26 of the Codification of 1936 has occasioned much comment and not a little apprehension among native and foreign investors in and owners of property in Colombia. This article states that "property is a social function which implies obligations." Hence, "For reasons of public utility or social interest, as defined by the legislature, property may be expropriated by judicial decree with prior indemnification." The taking of private property for public purpose with indemnification is nothing new. But Article 26 further provides: "Nevertheless, the legislature, for reasons of equity, may deny indemnification by means of an absolute majority vote of the members of both Houses." In other words, Congress may (by extraordinary majority decision, to be sure) deny the granting of any indemnity in a particular expropriation

⁹ The Supreme Court's opinion on this point is: "Es preciso no perder de vista que ella preconizó de manera expresa que no es al Gobierno al que corresponde determinar las medidas necesarias para realizar la intervención en las industrias, sino al Congreso, por medio de leyes aprobadas con un quórum determinado y en una forma especial" (quoted in Tulio Enrique Tascón, *Derecho constitucional colombiano*, Bogotá, 3d ed., 1944, p. 94).

"for reasons of equity." No court decision has been found which interprets the meaning of "for reasons of equity." In his commentary on the Colombian Constitution, Dr. Tulio Enrique Tascón offers the following as his interpretation: If property were expropriated for the building of a public work or something of that nature, and if such improvement enhanced the value of the remaining property to a degree greater than the value of the property taken, this would, "for reasons of equity," justify denial of indemnification.¹⁰

Finally, the Codification of 1936 contains a provision which recognizes that "public assistance is a function of the State. It shall be given to persons who, being physically incapacitated for work, lack the means of self-support or the right to demand the same of other persons" (Art. 39).

A translation of the text of the *Codification of 1936* follows.

¹⁰ "En nuestro concepto, ello puede tener lugar, por ejemplo, cuando la expropiación se decreta para la ejecución de obras que, como la construcción de vías, avenamiento de pantanos, etc., aumentan el valor comercial de las zonas contiguas" (*op. cit.*, p. 91).

CONSTITUTION
OF THE
REPUBLIC OF COLOMBIA

In the Name of God, Supreme Source of all Authority, and with the object of strengthening the national unity and of insuring the benefits to be derived from justice, liberty, and peace, we have agreed to decree and do hereby decree the following

CONSTITUTION OF COLOMBIA

TITLE I

THE NATION AND THE TERRITORY

Article 1: The Colombian Nation is reconstituted a unitary Republic.

Article 2: Sovereignty is vested essentially and exclusively in the Nation, and from it emanate all the public powers which shall be exercised within the limits prescribed by this Constitution.

Article 3: The boundaries of Colombia with neighboring countries are:

With Venezuela, those defined in the arbitral award made by the King of Spain, March 16, 1891; with Brazil, those defined in the treaties of April 24, 1907, and November 15, 1928; with Perú, those defined in the treaty of March 24, 1922; with Ecuador, those defined in the treaty of July 15, 1916; and with Panamá, those defined in the treaty of August 20, 1924.

The islands, isles, shoals, rocks, and banks in the adjacent seas, the Island of Malpelo, and the archipelago of San Andrés and Providencia likewise form part of Colombia.

The boundaries between the Republic and contiguous countries may be altered only by public treaties duly approved by Congress.

Article 4: The territory together with the public property therein contained belongs exclusively to the Nation.

Article 5: The national territory is divided into Departments, Intendancies, and Subdelegations (*Comisarias*), the first being divided into Municipalities or Municipal Districts.

The formation of new Departments may be decreed by law by dismembering existing ones, or by other means, provided always that the following conditions are met:

(1) That such action shall have been requested by three fourths of the Municipal Councilors of the area of which the new Department is to consist;

(2) That the new Department shall have at least 250,000 inhabitants and an annual revenue of 500,000 pesos; and

(3) That the Department or Departments from which such territory may be taken shall each continue to have a population of at least 250,000 inhabitants and an annual revenue of 500,000 pesos.

Territory belonging to one Department may by law be added to another contiguous Department or Departments, taking into account the wishes of the inhabitants of said territory and after prior notification to the Governors of the Departments concerned.

Whatever may be necessary to carry this provision into effect shall be provided by law.

Uncertain boundary lines shall be determined by boundary commissions appointed by the Senate.

Intendancies and Subdelegations (*Comisarias*) shall be under the immediate control of the Government, and Congress shall have power to provide for their organization and for their administrative subdivisions.

The law may create or abolish Intendancies and Subdelegations, annex them partially or wholly to Departments, enact special statutes for them, and regulate their electoral organization and their judicial and administrative courts.

Article 6: Besides the general division of territory there shall be others within the boundaries of each Department for purposes of the public service.

The several divisions relating to finance, military affairs, and public education may not coincide with the general division.

TITLE II

THE INHABITANTS: NATIONALS AND ALIENS

Article 7: The following persons are declared to be Colombians:

(1) By birth:

(a) Those who are natives of Colombia under either of the following circumstances: the father or mother being a native Colombian or a Colombian national, or, being children of aliens, they are domiciled in the Republic;

(b) Children of a Colombian father or mother who were born

abroad but who shall afterwards establish their domicile in the Republic.

(2) By adoption:

- (a) Aliens who apply for and obtain letters of naturalization;
- (b) Hispano-Americans and Brazilians by birth who, with permission of the Government, ask to be registered as Colombians by the municipal authorities of the place wherein they reside.

Article 8: The status of Colombian national is forfeited by obtaining letters of naturalization in a foreign country and establishing a domicile abroad; however, it may be recovered in accordance with laws enacted for that purpose.

Article 9: It is the duty of all nationals and aliens in Colombia to live in submission to the Constitution and laws and to respect and obey the authorities.

Article 10: Aliens shall enjoy in Colombia the same civil rights which are granted Colombians. However, the enjoyment of certain civil rights by aliens may for reasons of public order be subjected to special conditions or denied by law.

Aliens shall enjoy in the territory of the Republic the same guarantees granted nationals subject to whatever limitations may be established by the Constitution and laws.

Political rights are reserved to nationals.

Article 11: Any Colombian who is captured in a war against Colombia with arms in hand shall be tried and punished as a traitor even though he has lost his status as a national.

Naturalized persons and aliens residing in Colombia shall not be compelled to bear arms against the country of their origin.

Article 12: The powers, recognition, and in general the governance of corporations and other juridic persons shall be determined by Colombian law.

Article 13: Colombians twenty-one years of age are citizens.

Loss of nationality carries with it loss of citizenship. Such is also lost or suspended by virtue of judicial sentence in cases determined by law.

Those who have lost citizenship may solicit rehabilitation.

Article 14: The possession of full rights of citizenship is an indispensable condition precedent for voting and election to office and for employment in any public office carrying with it authority or jurisdiction. Colombian women who have reached their majority may hold public office under the same terms that the law prescribes for citizens even though such office carries with it authority and jurisdiction.

TITLE III

CIVIL RIGHTS AND SOCIAL GUARANTEES

Article 15: The authorities of this Republic are established in order to protect the lives, honor, and property of all persons residing in Colombia and to assure the fulfilment of the social duties of the State and of individuals.

Article 16: Private persons are not responsible to the authorities except for violations of the Constitution and laws. Public officers are responsible in the same manner as well as for exceeding their powers or for failing to execute them.

Article 17: In case of a manifest violation of any Constitutional provision to the injury of any person, a superior's order shall not exempt from responsibility the agent who may execute it.

The military on active service shall not be held to this responsibility. With respect to them, the superior who gives the order shall alone be responsible.

Article 18: There shall be no slaves in Colombia. Any person being a slave who shall enter the territory of the Republic shall be free.

Article 19: No one shall be molested in his person or family, or imprisoned or arrested, nor shall his domicile be searched unless upon a written warrant from competent authority issued with all legal formalities and for an offense previously defined by law.

In no case may he be detained, imprisoned, or arrested for purely civil offenses or obligations, save that he may be required to give security.

Article 20: A person taken *in flagrante delicto* may be arrested and carried before a Judge by any other person. If the police pursue him and he takes refuge in his own dwelling, they may enter for the purpose of apprehending him; and if he seeks asylum in the house of another, requisition for him should first be made of the owner or tenant thereof.

Article 21: No person shall be compelled to testify in criminal or police proceedings against himself or against his relatives to the fourth degree of consanguinity or the second degree of affinity.

Article 22: No one may be prosecuted except for the violation of laws enacted prior to the offense with which he is charged and before a competent Tribunal in accordance with all the formalities applicable to his case.

In all criminal matters the accused shall have the benefit of the laws which most leniently affect the charge against him, although enacted after the commission of the offense.

Article 23: The preceding article notwithstanding, punishments may be inflicted without previous trial and within the precise limits set forth by law by the following officers:

(1) Those officers exercising authority or jurisdiction who have the power to punish by fine or imprisonment for injury or disrespect toward them in the discharge of their official duties;

(2) Military Chiefs who may inflict immediate punishment in order to subdue a military insubordination or mutiny or to maintain discipline in the face of the enemy;

(3) Masters of ships who, not being in port, may exercise the same authority in order to prevent the commission of crime on board.

Article 24: Even in time of war no person may be punished under an *ex post facto* law, but only in accordance with a law, order, or decree by which the act shall have been previously prohibited and the punishment prescribed.

Even in time of peace this provision shall not prevent the Government, after previous consultation with the Ministers, from ordering the arrest or detention of persons seriously suspected of having committed a crime against the public peace.

Article 25: The legislature may not impose the death penalty in any case.

Article 26: Private property and other rights legally acquired in accordance with the civil laws by natural or juridic persons shall be guaranteed, nor may they be disavowed by later laws. When the enforcement of a law passed for reasons of public utility or social interest conflicts with the rights of individuals, private interests must give way to the public or social interests.

Property is a social function which implies obligations.

For reasons of public utility or social interest, as defined by the legislature, property may be expropriated by judicial decree with prior indemnification.

Nevertheless, the legislature, for reasons of equity, may deny indemnification by means of an absolute majority vote of the members of both Houses.

Article 27: No law establishing a monopoly may be executed until the individuals who may be deprived of the exercise of a legitimate business thereby have been fully indemnified.

No monopoly may be established except by virtue of law and until a condemnation proceeding has been had.

Privileges may be granted only in connection with useful inventions and with agencies of communication.

Article 28: By means of legislation the State may intervene in the exploitation of public and private business and industries for the purpose of rationalizing production, distribution, and consumption of goods, or to give labor the just protection to which it has a right.

Laws passed in the exercise of the power referred to in this article require the approval of an absolute majority of the members of both Houses.

Article 29: Only the Congress, Department Assemblies, and Municipal Councils may impose taxes in time of peace.

Article 30: In time of war and solely for the purpose of effecting the restoration of public order, the necessity for expropriation may be decreed by authorities not vested with judicial power and without prior indemnification.

In such case, real property may be occupied only temporarily either to meet the necessities of war or to provide for them with the revenues of the occupied property as a pecuniary penalty imposed on the owners according to law.

The Nation shall always be responsible for expropriations made by the Government or its agents.

Article 31: The penalty of confiscation may not be imposed.

Article 32: Literary and artistic productions shall be protected as personal property during the lifetime of the author and for eighty years thereafter, subject to such formalities as may be prescribed by law.

This same guarantee is offered to owners of works published in Spanish-speaking countries without the necessity of declaring it by means of international conventions provided the said countries extend reciprocal treatment in their legislation.

Article 33: Gifts *inter vivos* or by testament made in accordance with law for purposes of social interest may not be changed or modified by the legislature. The Government shall supervise the management and expenditure of such gifts.

Article 34: In Colombia there shall be no real estate which may not be freely transferred, nor shall there be any irredeemable obligations.¹

Article 35: Freedom of instruction is guaranteed. The State, however, shall have the supreme power of inspecting public and private educational institutions in order to assure the advancement of proper social and cultural ends and the best intellectual, moral, and physical development of those being educated.

Primary education shall be gratuitous in state schools and shall be obligatory to whatever grade the law may prescribe.

¹ This article is modified by the provision in Art. 45.

Article 36: The press is free in time of peace, but it shall be responsible under law for injuries to personal honor and for disturbance of the social order and public peace.

No periodical publication shall receive any pecuniary aid from other governments or foreign companies without the permission of the Government.

Article 37: All correspondence entrusted to telegraph companies and post offices shall be inviolable. Letters and private papers shall not be intercepted or examined except by order of a competent officer in such cases and with such formalities as may be provided by law, and for the sole purpose of procuring testimony in judicial investigations.

The presentation of account books and other papers may be demanded for purposes of tax investigation.

Charges may be made for the circulation of printed matter through the post offices, but such circulation shall never be prohibited in time of peace.

Article 38: Everyone is free to select a profession or employment. Certificates of fitness as well as the regulation of professions may be provided by law.

The authorities may inspect professions and employments in the interest of public morals, security, and health.

The production and consumption of liquors and fermented beverages may be restricted by law.

The charges and regulations of transport agencies and other public services may be revised and supervised by law.

Article 39: Public assistance is a function of the State. It shall be given to persons who, being physically incapable of working, lack the means of self-support or the right to demand the same of other persons.

The manner in which public assistance shall be given and those cases in which the State shall give it directly shall be determined by law.

Article 40: Labor is a social obligation, and it shall enjoy the special protection of the State.

Article 41: All persons have the right to present respectful petitions to the authorities, whether for reasons of public or private interest, and to receive prompt consideration thereof.

Article 42: All classes of persons may meet in peaceful assemblies. The authorities may disperse all assemblies which degenerate in disorder or tumult or which obstruct the public highways.

Article 43: All popular political organizations of a permanent character are forbidden.

In order that they may enjoy the protection of the laws, all re-

ligious associations shall present to the civil authorities their authorization issued by their respective ecclesiastical superiors.

Article 44: The formation of companies, associations, and foundations which are not contrary to morals or the legal order is permitted. Associations and foundations may obtain recognition as juridic persons.

The right to strike is guaranteed except in the public services. Its exercise shall be regulated by law.

Article 45: The law shall determine whatever may be necessary relative to the civil status of persons and the rights and duties thereof. Homestead laws may be enacted.

Article 46: Only the Government may import, manufacture, and possess arms and munitions of war.

No persons shall be permitted to carry arms in towns without permission from the authorities. This permission shall in no case be given to persons attending political meetings, elections, or the sessions of public assemblies or corporations, whether they participate therein or are present only as spectators.

Article 47: The responsibility to be incurred by public officers of all classes who invade the rights guaranteed in this title shall be determined by law.

Article 48: Any new emission of fiat paper money is absolutely prohibited.

Article 49: The provisions contained in this title shall be incorporated in the Civil Code as a preliminary title and may not be altered except by an act amending the Constitution.

TITLE IV

RELIGION AND THE RELATIONS OF CHURCH AND STATE

Article 50: The State guarantees liberty of conscience.

No one shall be molested for his religious opinions, or compelled to profess beliefs or observe practices contrary to his conscience.

The liberty of all cults not contrary to Christian morals or law is guaranteed. Acts contrary to Christian morals or subversive of the public order done in connection with or under the pretext of the exercise of any cult shall be subject to ordinary law.

The Government may celebrate with the Holy See, subject to subsequent approval of Congress, conventions for the regulation of the relations between the State and the Catholic Church on bases of reciprocal deference and mutual respect.

Article 51: Sacerdotal functions are incompatible with those of public political office. Catholic priests may, nevertheless, be employed in public education and charity.

TITLE V

THE NATIONAL ORGANS AND THE PUBLIC SERVICE

Article 52: The organs of public power are: the Legislative, the Executive, and the Judicial.

The organs of public power are limited and have separate functions, but they collaborate harmoniously in the realization of the ends of the State.

Article 53: The Legislative Organ is the Congress composed of the Senate and House of Representatives.

The Executive Organ consists of the President of the Republic and the Ministers of State.

The President and the Ministers, and in each individual action the President and the Minister of the department involved, constitute the Government.

The Judicial Organ consists of the Supreme Court of Justice, Superior District Tribunals, and other Tribunals and Courts which may be established by law.

The Senate may exercise certain judicial functions.

Article 54: The power to enact legislation shall be vested in Congress.

Article 55: No person or corporation shall in time of peace exercise at the same time political or civil and judicial or military authority.

Article 56: The law shall determine all cases in which incompatibility of functions exists; the cases relating to the responsibility of public officers and the manner of making it effective; the qualifications and necessary antecedents requisite for the exercise of certain employments in cases not provided for by the Constitution; the conditions for promotion and retirement; and the kinds or classes of civil or military services that shall be entitled to pensions from the public treasury.

Article 57: There shall be no office in Colombia the duties of which are not defined by law or regulation.

Article 58: No one may receive more than one salary payable by the public treasury or by businesses or institutions in which the State has a principal part except in those special cases determined by law. The term "public treasury" is to be understood as that of the Nation, the Departments, and the Municipalities.

Article 59: No public officer shall enter upon the discharge of his office until he has taken an oath to sustain and defend the Constitution and to perform the duties of his office.

Article 60: No Colombian in the service of Colombia shall, without the permission of the Government, receive from a foreign government any honor or gift under penalty of forfeiting his office.

Article 61: No Colombian may receive from a foreign government any employment or commission near the government of Colombia without having previously obtained necessary authorization from the latter.

TITLE VI

SESSIONS AND POWERS OF CONGRESS

Article 62: The legislative Houses shall meet in ordinary session the first of February and the twentieth of July each year in the capital of the Republic.

The first ordinary session shall continue for 90 days, and the second for 120 days.

Congress may also be called into extraordinary session by the Government for as long as the latter shall decide, and in this event it may not occupy itself with any business other than that which the Government submits to its consideration.

If for any reason Congress is unable to meet on the days indicated, it shall meet as soon as possible within the year.

Article 63: The two Houses shall be opened and closed publicly and at the same time.

Article 64: The two Houses shall not open their sessions nor deliberate with less than one third of their members present.

The President of the Republic in person or acting through his Ministers shall open and close the Houses.

This ceremony is not essential to the legal exercise of congressional functions.

Article 65: When on the arrival of the day for the assembling of Congress it is found that the requisite quorum is not present, those members present sitting in preparatory or provisional council shall impose such fines upon absent members as may be prescribed by the respective Houses, and the sessions shall be opened as soon as the requisite number of members is present.

Article 66: By agreement of the two Houses, Congress may assemble at another place, and in case of public disturbance it may assemble at a place designated by the President of the Senate.

Article 67: Congress shall meet in joint session only for the purpose of inducting the President of the Republic into office and of electing Presidential Alternates (*Designados*).

In such cases, the Presidents of the Senate and the House shall be President and Vice-President of the Congress respectively.

Article 68: Any meeting of the members of Congress for the purpose of exercising the Legislative Power which is held in violation of the constitutional provisions shall be illegal, any actions taken shall be void, and the individuals participating in the deliberations shall be punished according to law.

Article 69: The power to enact legislation belongs to Congress.

By means of laws it exercises the following powers:

- (1) To interpret, amend, and repeal pre-existing laws;
- (2) To modify the general division of the territory in accordance with Article 5, and to establish and change whenever necessary the other territorial divisions mentioned in Article 6;
- (3) To confer special powers upon Department Assemblies;
- (4) To change the residence of the high national authorities whenever under extraordinary circumstances and for grave reasons it may be deemed necessary for public convenience;
- (5) To determine the size of the standing Army each biennium in ordinary session;
- (6) To create all offices required by the public service and to fix their respective salaries;
- (7) To regulate the public service, determining all matters referred to in Article 56;
- (8) To authorize the Government to make contracts, negotiate loans, alienate national property, and exercise other functions within constitutional limits;
- (9) To invest the President of the Republic temporarily with such extraordinary powers as necessity may require or the public convenience demand;
- (10) To provide for the national revenues and to determine the expenses of administration.

Each session shall vote a general budget of revenues and expenses.²

The estimates so made shall not include any item not previously decreed by law or a credit not judicially recognized;

- (11) To examine the national debt and arrange for servicing it;
- (12) To decree extraordinary taxes when necessary;
- (13) To approve or reject contracts or agreements entered into

² See also Article 203 of this Codification.

by the President of the Republic with private persons, companies, or political entities wherein the national Treasury is interested, if such have not been previously authorized, or if the formalities prescribed by Congress have not been complied with, or if any condition contained in the law authorizing them has been disregarded;

(14) To fix the weight, type, and denomination of money and to regulate the system of weights and measures;

(15) To organize the public credit;

(16) To decree the building or continuance of public works and the erection of public monuments;

(17) To encourage the construction of such useful and beneficial works as may be deemed worthy of encouragement and support;

(18) To decree public honors to citizens who have rendered distinguished service to the fatherland;

(19) To approve or reject treaties entered into by the Government with foreign powers;

(20) To grant amnesties and general pardons for political offenses by a vote of two thirds of the members of each House for grave reasons of public convenience. In case the recipient of a pardon is thereby relieved of civil responsibility to any person, the Government shall be obligated to indemnify that person;

(21) To limit or regulate the appropriation or conveyance of waste lands.

Article 70: Each year Congress shall elect two Presidential Alternates (*Designados*) of first and second rank, who shall, in the absence of the President, exercise the Executive Power by order of the Congress.

Article 71: The following acts are prohibited to Congress and to either of its Houses:

(1) To bring moral compulsion (*Dirigir excitaciones*) upon public officers;³

(2) To enact laws or adopt resolutions concerning matters exclusively within the jurisdiction of other branches of government;

(3) To vote approval or censure of any official act;

(4) To require the Government to furnish the instructions given

³ The Spanish text is: *Dirigir excitaciones a funcionarios públicos*. This text is interpreted to mean that the "excitación" which the Houses may direct to a public officer would be equivalent to a species of moral compulsion to induce that officer to function in a determined manner and would thereby impose on such officer who is legally responsible for his acts and omissions the congressional will, which is, in such matters, irresponsible. See Tulio Enrique Tascón, *Derecho constitucional colombiano* (2d ed; Bogotá, 1939), p. 158.

to Diplomatic Agents or to give information relative to negotiations of a secret nature;

(5) To grant any person or entity any reward, indemnity, pension, or other pecuniary consideration that is not intended to satisfy credits or rights recognized by pre-existing law, except for that provided in Article 69, subsection 17;

(6) To enact laws of banishment or persecution against persons or corporations.

TITLE VII

CONCERNING THE ENACTMENT OF LAWS

Article 72: Laws may originate in either House and may be introduced by any member thereof or by the Ministers of State.

Article 73: The following are excepted from the provisions of the preceding article:

(1) Those laws which may originate only in the House of Representatives (Article 96, subsection 2);

(2) Enactments relative to the civil law and judicial procedure which may not be modified except by a bill introduced by the special standing committee of each House or by the Ministers of State.

Article 74: No legislative enactment shall become law unless:

(1) It shall have been approved in each House, after three readings on separate days, by a majority of the members thereof;

(2) It shall have been sanctioned by the Government.

Article 75: The consideration of a law cannot be closed upon the second reading or voted upon the third reading without the attendance of an absolute majority of the persons composing the House.

Article 76: The Government may take part in all legislative debates through the Ministers of State.

Article 77: The Justices of the Supreme Court may participate in the debate of all bills relating to civil laws and judicial procedure.

Article 78: After a bill has been approved by both Houses, it shall be sent to the Government; and if the latter approve it also, it shall be promulgated as law.

If it is not approved, the Government shall return it, with objections, to the House in which the bill originated.

Article 79: The President of the Republic shall be allowed a period of six days within which to return a bill with objections provided it does not contain more than fifty articles; ten days if the bill contains

from fifty-one to two hundred articles; and fifteen days if the bill contains more than two hundred articles.

If the President, after the expiration of these periods of time, has not returned the bill with objections, he must approve and promulgate the law. But if the Houses adjourn within the periods of time prescribed, the President must publish the bill with his approval or objections within ten days after the Congress has adjourned.

Article 80: A bill objected to as a whole shall be returned by the President for reconsideration by the Houses on the third reading. If it has been objected to only in part, it shall be placed upon its second reading for the sole purpose of considering the objections of the Government.

Article 81: The President of the Republic shall approve, without the power to present new objections, every bill which upon reconsideration shall have been adopted by an absolute majority of the members of each House.

Article 82: If the Government fails to approve bills under the terms and according to the conditions established by this title, it shall be the duty of the President of the Congress to approve and promulgate the same.

Article 83: If a bill is objected to on the grounds of unconstitutionality, it shall be excepted from the provisions of Article 81. In this event, if the Houses insist, the bill shall be referred to the Supreme Court, which shall within six days decide upon its constitutionality. An affirmative decision by the Court obligates the President to approve the law. If the decision is negative, the bill shall fail.

Article 84: During any of the sessions of Congress bills left pending which have reached the second reading in either of the two Houses shall continue their legislative course from that point in the subsequent session.

Article 85: The text of all laws shall begin with this formula:
The Congress of Colombia decrees—

TITLE VIII

THE SENATE

Article 86: The Senate shall be composed of members chosen on the basis of the population of the Republic calculated at the ratio of one Senator for each 120,000 inhabitants and an additional Senator for each fraction amounting to more than one half this number. Each time a new general census of the Republic indicates an increase in population

of at least 500,000 persons, the number of persons represented by one Senator shall automatically be increased by 30,000. Two Alternates (*Suplentes*) shall be elected for each Senator.

Article 87: Senators shall be native-born Colombians in the full exercise of the rights of citizenship, they shall be more than thirty years of age, and they shall have an annual income of at least two thousand pesos derived from property or from the exercise of an honest occupation.

Article 88: Senators shall continue in office for four years, and they shall be eligible indefinitely for re-election.

Article 89: The Senate shall take cognizance of all accusations brought by the House of Representatives against officers in accordance with Article 96, subsection 4.

Article 90: In all trials by the Senate the following rules shall be observed:

(1) Whenever an accusation is publicly made, the accused shall *ipso facto* be suspended from office;

(2) If the accusation charges offenses committed in the performance of duties or unfitness on account of misconduct, the Senate may not impose any other penalties than removal from office or the temporary or permanent deprivation of political rights; but if the accused is charged with offenses which merit other penalties, he shall be tried by the Supreme Court according to criminal procedure;

(3) If the accused is charged with common crimes, the Senate shall determine whether there are grounds for proceeding against him; and in the event of an affirmative decision, it shall remand him to the Supreme Court for trial;

(4) The Senate may refer the preparation of the trial to a committee of its own members, reserving to itself the duty of trial and of pronouncing sentence, which shall be done in open session by a vote of at least two thirds of the Senators participating in the trial.

Article 91: The Senate shall also have the following powers:

(1) To restore citizenship to those who have lost it. According to the circumstances in each case, this act of clemency shall extend only to electoral rights, or the capacity to fill certain public posts, or to the exercise of all political rights;

(2) To appoint two members of the Council of State;

(3) To accept or reject the resignations of the President and Vice-President⁴ of the Republic and of the Presidential Alternate (*Designado*);

⁴ The office of Vice-President was abolished in 1905. See Legislative Act No.

(4) To confirm or reject military appointments made by the Government from the rank of Lieutenant Colonel to that of the highest rank in the Army and Navy;

(5) To grant the President of the Republic permission to absent himself temporarily from office for other cause than illness, or to permit him to exercise his functions outside the capital;

(6) To permit the passage of foreign troops through the territory of the Republic;

(7) To appoint the survey commissions referred to in Article 5;

(8) To authorize the Government to declare war against another nation.

Article 92: In addition to the powers provided in Article 91, the Senate shall also elect four Justices to the Supreme Court of Justice and their Alternates (*Suplentes*) from ternaries presented by the President of the Republic.

TITLE IX

HOUSE OF REPRESENTATIVES

Article 93: The House of Representatives shall be composed of members chosen on the basis of the population of the Republic at the ratio of one Representative for each fifty thousand inhabitants and an additional Representative for each fraction amounting to more than one half of this number. Each time a new general census of the Republic indicates an increase in population of at least five hundred thousand persons, the number of persons represented by one Representative shall automatically be increased by ten thousand persons.

For each Representative there shall be elected two Alternates (*Suplentes*).

Each Department shall constitute an election district for the election of Representatives.

Article 94: To be elected Representative, one must be a citizen in the full exercise of the rights thereof who has not been condemned for an offense meriting corporal punishment and who is more than twenty-five years of age.

Article 95: Representatives shall be elected for a term of two years and shall be eligible indefinitely for re-election.

Article 96: The House of Representatives shall have the following powers:

5 of 1905, Art. 1 (República de Colombia, *Leyes*, Bogotá, 1906). The office of Presidential Alternate was created by Legislative Act No. 3 of 1910, Art. 10 (República de Colombia, *Leyes*, Bogotá, 1911).

(1) To examine and pronounce finally upon the general account of the Treasury;

(2) To initiate all laws for the levying of taxes and for the organization of the Public Ministry;

(3) To elect five Justices of the Supreme Court of Justice and their Alternates (*Suplentes*) from ternaries presented by the President of the Republic;

(4) To impeach before the Senate, when occasion shall require it, the President of the Republic, Ministers of State, the Attorney-General of the Nation, and the Justices of the Supreme Court;

(5) To examine charges and complaints presented to it by the Attorney-General or by private persons against the above-mentioned officials, and, if found in order, to prepare the Articles of Impeachment for consideration by the Senate.

TITLE X

PROVISIONS COMMON TO BOTH HOUSES AND TO THE MEMBERS THEREOF

Article 97: Each of the two Houses shall have the following powers:

(1) To make its own rules and regulations and to take whatever measures are deemed necessary to insure the attendance of its members;

(2) To create and provide for such offices as may be deemed necessary for the discharge of its business;

(3) When necessary, to organize a police force for the building in which it holds its sessions;

(4) To determine if the credentials which each member presents on taking his seat are in accordance with law;

(5) To answer or decline to answer the messages of the Government;

(6) To call upon the Ministers of State for written or verbal reports necessary for the better performance of the work of the respective House or to inform itself of the acts of the administration, except such as are reserved from such inquiry by Article 71, subsection 4;

(7) To appoint committees to represent it in official acts;

(8) To appoint speakers before the other House in cases of disagreement in the passage of legislation;

(9) To approve all resolutions deemed proper within the limits prescribed in Article 71.

Article 98: The sessions of the two Houses shall be public within the limitations prescribed by their rules and regulations.

Article 99: The members of the two Houses represent the entire nation and should vote in the sole interest of justice and the public good.

Article 100: Senators and Representatives may not be held responsible for votes and opinions expressed in the performance of their duties. For any expression in debate they shall be responsible only to the House to which they belong; they may be called to order by the presiding officer and punished according to the regulations for any offense committed.

Article 101: During the session, forty days before and twenty days after the same, no member of Congress may be arrested or called in a criminal trial without permission of the House to which he belongs. If taken in *flagrante delicto*, he may be arrested, and he shall be placed immediately at the disposal of his House.

Article 102: The President of the Republic, Ministers of State, Justices of the Supreme Court of Justice, the Attorney-General, and Governors may not be elected to Congress until three months after they have ceased functioning in their former offices.

Nor may anyone be Senator or Representative for any Department or electoral district where, within three months before the election, he shall have exercised civil, political, or military jurisdiction or authority.

Article 103: No citizen may be elected to Congress who, at the time of election or during the six months preceding the same, has been party to any business with the Government either in his own interest or in the interest of third parties other than connection with official entities or institutions.

The law shall determine the kind of business to which this provision is applicable as well as the special proofs to demonstrate the same.

Article 104: The President of the Republic may not confer any offices upon Senators or Representatives during their term of office, except the offices of Minister of State, Governor, Diplomatic Agent, and Military Chief in time of war.

The violation of this provision nullifies the appointment.

The acceptance of such appointments as are excepted above by members of Congress shall cause their congressional seats to be vacant for the time during which they shall be engaged in the office.

Article 105: Senators and Representatives shall not, either directly or through third persons, enter into any contract with the administration, nor shall they accept a power of attorney for the negotiation of business with the Government of Colombia.

Article 106: No increase in salary or viaticum decreed by Congress shall enter into effect until after the members who have voted the same shall have served out their terms.

Article 107: In cases of temporary or permanent vacancies, the same shall be filled by the respective Alternates (*Suplentes*).

Article 108: The remuneration of Congressmen shall be annual, and shall be fixed and regulated by law.

TITLE XI

THE PRESIDENT OF THE REPUBLIC AND THE PRESIDENTIAL ALTERNATES

Article 109: The President of the Republic shall be elected in one day by the direct vote of those citizens having the right to vote for Representatives and for a term of four years in the manner determined by law.

Article 110: The President of the Republic shall have the same qualifications as are required for Senators.

Article 111: The President-elect of the Republic shall take office before the President of Congress, and he shall take the following oath: "I swear before God to comply faithfully with the Constitution and laws of Colombia."

Article 112: If for any reason the President should not be able to take office in the presence of the President of Congress, he shall do so before the President of the Supreme Court and, failing in this, before two witnesses.

Article 113: The President of the Republic shall exercise the following powers with relation to the Legislative Power:

- (1) To open and close the ordinary sessions of Congress;
- (2) To convene Congress in extraordinary session for serious reasons of public convenience and after prior consultation with the Council of State;
- (3) To present to Congress at the beginning of each session a message relating the acts and measures taken by the administration;
- (4) To remit at the same time to the House of Representatives the budget of revenues and expenses and a general account of the Treasury;⁵
- (5) To furnish the two Houses such information as they may request which does not require secrecy;
- (6) To furnish efficient and effective aid to the two Houses when they request it, placing at their disposal if necessary the entire public force;
- (7) To co-operate in the enactment of legislation by presenting bills

⁵ This subsection has been amended by Article 203.

through the Ministers of State, and by exercising the power of veto and approval under the Constitution;

(8) To issue decrees having the force of legislative enactments in such cases and with such formalities as are prescribed in Article 117.

Article 114: The President of the Republic shall exercise the following powers with relation to the Judicial Power:

(1) To appoint and remove officers in the Public Ministry;

(2) To see that prompt and equal justice is administered throughout the Republic, giving judicial officers all aid necessary for the execution of their decisions which are made in accordance with law;

(3) Acting through the proper official of the Public Ministry or a prosecuting attorney appointed for that purpose, to institute proceedings before the competent Tribunal against Governors of Departments and any other national or local administrative or judicial officers for infractions of the Constitution or laws, or for other crimes committed in the performance of their duties;

(4) To grant pardons for political offenses and commutations of penalties for common crimes in accordance with the law which regulates the exercise of this power. In no case shall these pardons and commutations relieve the recipients of responsibilities due private persons under the laws.

This power may not be exercised in favor of Ministers of State except upon petition of one of the legislative Houses.

Article 115: The President of the Republic shall exercise the following powers as supreme administrative authority:

(1) To appoint and remove at pleasure the Ministers of State;

(2) To promulgate laws, obey them, and see that they are faithfully executed;

(3) To issue ordinances, decrees, and resolutions necessary for the execution of the laws;

(4) To appoint and remove Governors at pleasure;

(5) To appoint all persons in the national service whose appointment is not entrusted to other authorities or corporations in accordance with this Constitution and laws hereafter enacted.

In all cases the President shall have the power to appoint and remove his agents at pleasure;

(6) To distribute the public armed forces and to make military appointments subject to the restrictions imposed in Article 91, subsection 4, and in accordance with the formalities prescribed by law for the exercise of this power;

(7) To maintain public order throughout the territory and to re-establish the same when it has been disturbed;

(8) Whenever he may think proper, to direct the military operations as chief of the armies of the Republic. Should he exercise military command beyond the limits of the capital, the Vice-President shall assume charge of the other branches of the administration;⁶

(9) To provide for the external security of the Republic defending the independence and honor of the Nation and the inviolability of its territory; to declare war with the consent of the Senate or to make war without such consent when it becomes necessary to repel a foreign invasion; and to conclude and ratify the treaty of peace reporting his actions with pertinent documents to the next session of Congress;

(10) When the Senate is in recess, to permit the passage of foreign troops through the territory of the Republic after prior consultation with the Council of State;

(11) To permit the harboring of foreign warships within the waters of the Nation after prior consultation with the Council of State;

(12) To supervise the collection and administration of the revenues and public moneys and to decree their disbursement according to law;

(13) To regulate, direct, and inspect national public education;

(14) To enter into administrative contracts for the engagement of services or for the performance of public works in accordance with the fiscal laws, and to render account thereof to Congress at its ordinary sessions;

(15) To exercise the necessary supervision over banks of issue and other establishments of credit in accordance with law;

(16) To permit the acceptance of honors and gifts from foreign governments by national officials who may request such permission;

(17) To issue letters of naturalization in accordance with law;

(18) To grant patents for prescribed periods in accordance with law to creators of useful inventions and improvements;

(19) To exercise the right of inspection and supervision over institutions of common utility in order that their revenues may be protected and properly applied and that the will of the founders may in all respects be executed.

Article 116: As supreme administrative authority, the President of the Republic shall direct the diplomatic and commercial relations with foreign powers, appoint Diplomatic Agents, receive foreign diplomatic representatives, and enter into treaties and conventions, which shall be submitted to Congress for approval.

Article 117: In cases of foreign war or domestic disturbance the

⁶ The Presidential Alternate now takes charge of such duties; see note to Art.

President may with the consent of the Council of State declare the public order disturbed and place all or part of the Republic in a state of siege. During such time the Government shall have in addition to its other legal powers those granted by the accepted rules of the law of nations which have for their purpose the regulation of international war.

Decrees issued by the President within the above limitations shall have the force of law provided they carry the signatures of all the Councilors of State.

The Government may not, however, repeal laws by means of such decrees. Its powers are limited to the suspension of such laws as are incompatible with the state of siege.

The Government shall declare the public order re-established as soon as the foreign war is terminated or the revolt suppressed; the extraordinary decrees which have been issued shall cease to be in force.

The President and Councilors of State shall be held responsible for any declaration of the disturbance of the public order when there is not in fact a foreign war or internal disturbance; any abuse of powers granted by this article by any other functionaries shall likewise cause them to be held responsible.

When the public order is re-established, the Government shall call Congress into session and present a report of its actions.

In case of foreign war the Government shall call Congress into session in the same decree in which the public order is declared disturbed and the Republic is placed in a state of siege so that that body may meet within sixty days thereafter; and if Congress is not so called, it may meet on its own initiative.

Article 118: In the cases referred to in Articles 24 and 117 of the Constitution, the Government shall consult with the Council of State before taking any action.

Article 119: The President of the Republic, or whoever is acting in his stead, shall be responsible for acts and omissions which violate the Constitution or laws.

Article 120: No action taken by the President, except that of appointing or removing Ministers of State, shall have any force or validity unless it is communicated by the Minister of the department concerned, which Minister by such action makes himself responsible therefor.

Article 121: The President of the Republic while in office, and he who is functioning in the President's stead for the time he so functions, may not be prosecuted or judged for crimes except upon accusation by the House of Representatives and after the Senate shall have declared that there are grounds for such accusation.

Article 122: The President of the Republic, or he who is functioning in his stead, may not leave the national territory while in office and for one year thereafter without the permission of the Senate. Violation of this provision implies abandonment of office.

Article 123: The Senate may grant the President temporary leave from office.

For reasons of illness, the President may for whatever time may be necessary vacate office by giving prior notification to the Senate, or if that body is in recess, to the Supreme Court.

Article 124: In case of temporary absence of the President, the office shall be filled by the first or second Presidential Alternate (*Designado*) in the order named; in the event of permanent vacancy, the Presidential Alternate shall assume the presidential office until new elections are held.

When for any reason Congress has not chosen Presidential Alternates, those formerly selected shall continue in office. In case the offices of first and second Presidential Alternates are vacant, the exercise of the Executive Power shall be entrusted to the Ministers of State in the order determined by law; and in case none of them is qualified to serve, the office shall be entrusted to the Governors in the order determined by the proximity of their official residences to the capital of the Republic.

In the following cases the office of President is considered vacant:

In case of death, accepted resignation, removal by impeachment, permanent physical disability, or abandonment of office, the last two being declared by the Senate.

Article 125: In case of permanent vacancy of the presidency, he who is exercising the Executive Power shall decree the holding of elections within the following sixty days.

He who is exercising the Executive Power shall continue to do so without the necessity of decreeing new elections if there remains only a year or less before the end of the term of office.

Article 126: The person in charge of the Executive Power shall enjoy the same privileges and exercise the same powers accorded the President whose office he fills.

Article 127: In no case is the President of the Republic eligible for re-election for the term immediately following.

Nor may the person who has for any reason whatsoever exercised the Executive Power within the year immediately preceding the election be elected President of the Republic or Presidential Alternate (*Designado*).

TITLE XII

MINISTERS OF STATE

Article 128: The number, name, and precedence of the several Ministers of State or of the administrative departments shall be determined by law.

The President of the Republic shall distribute the public business among them according to their several jurisdictions.

Article 129: A Minister of State shall have the same qualifications as a Representative.

Article 130: The Ministers are the Government's organs of communication with Congress; they present bills to the Houses, take part in the debates, and advise the President as to approval or disapproval of legislation.

Each Minister shall present to Congress within the first fifteen days of each session a report on the condition of affairs in his department, and he shall recommend such reforms as experience may suggest.

The Houses may require the attendance of Ministers.

Article 131: The Ministers of State as superior chiefs of administration, and the Governors as agents of the Executive, may exercise under their own responsibility whatever functions may be given them by the President of the Republic as supreme administrative authority.

Those functions which may be delegated shall be defined by law.

Such delegation exempts the President from responsibility provided the person to whom it is made is given exclusive control, but his acts or resolutions may always be amended or revoked by the President, who by so doing reassumes responsibility.

TITLE XIII

THE COUNCIL OF STATE

Article 132: There shall be a Council of State composed of seven members: to wit, the first Presidential Alternate (*Designado*), who shall be the presiding officer, and six voting members chosen in such manner as the law shall prescribe.

The Ministers of State may participate in the deliberations of the Council, but they shall have no vote.

Article 133: The qualifications for Councilors of State shall be the same as those required to be a member of the Supreme Court of Justice.

Article 134: The office of Councilor is incompatible with any other effective public employment and with the exercise of the profession of attorney-at-law.

Article 135: Councilors of State shall hold office for four years, one half being elected every two years.

Article 136: The number of Alternates (*Suplentes*) for Councilors and the rules regarding the manner of their appointment, duties, and responsibilities shall be determined by law.

Article 137: The Council of State shall have the following powers:

(1) To act as the supreme consultative body for the Government in matters of administration; hence it shall be heard in all matters determined by the Constitution and laws.

The opinions of the Council are not binding upon the Government;

(2) To prepare bills and codes for the consideration of the two Houses, and to propose such reforms in all legislative matters as are deemed proper;

(3) To exercise, in accordance with rules established by law, the functions of Supreme Administrative Tribunal (*Tribunal Supremo de lo Contencioso Administrativo*);

(4) To establish its own rules and regulations subject to the obligation to hold at least three meetings a week, and to perform any other duties assigned by law.

TITLE XIV

THE PUBLIC MINISTRY (MINISTERIO PÚBLICO)

Article 138: The Public Ministry shall be exercised under the supreme direction of the Government acting through an Attorney-General of the Nation and the prosecuting attorneys of the Superior District Tribunals and other officers designated by law.

The House of Representatives may exercise the functions of a prosecuting attorney in certain cases.

Article 139: The officers of the Public Ministry shall defend the interests of the Nation; promote the execution of the laws, judicial sentences, and administrative orders; supervise the official conduct of public officers; and prosecute those guilty of crimes and misdemeanors that disturb the social order.

Article 140: The term of office of the Attorney-General of the Nation shall be three years.

Article 141: The Attorney-General of the Nation shall have the following special functions:

(1) To see that all public officers in the service of the Nation properly discharge their duties;

(2) To arraign before the Supreme Court all officers who are to be tried by that court;

- (3) To see that all other officers of the Public Ministry faithfully discharge their duties, and to enforce their responsibility for misconduct;
(4) To appoint and remove at pleasure his immediate subordinates;
And all other functions which may be assigned by law.

TITLE XV

ADMINISTRATION OF JUSTICE

Article 142: The Supreme Court of Justice shall be composed of whatever number of Justices may be determined by law, but that number may not be less than nine. The same law shall divide the court into sections, one of which shall be a court of cassation for civil cases, another for criminal cases, and another for general court business; the law shall also indicate to each section those matters of which it is to take cognizance separately and those in which the court shall function *en banc*.

Article 143: Justices of the Supreme Court shall hold office during good behavior.⁷ Cases of improper conduct and the procedures and formalities to be observed in so declaring them by judicial sentence shall be defined by law.

Any Justice who accepts another office from the Government shall be considered to have vacated his justiceship.

Article 144: The term of office for Justices of the Supreme Court shall be five years, and four years for Judges of the Superior Tribunals. Both may be indefinitely re-elected.

Article 145: The President of the Supreme Court shall be chosen annually by the court.

Article 146: The Government shall appoint provisional Justices of the Supreme Court of Justice, and the Governors shall appoint such for their respective Superior Tribunals when vacancies may not be filled by Alternates (*Suplentes*).

Article 147: Justices of the Supreme Court shall be Colombians by birth in the full exercise of the rights of citizenship; they shall be thirty-five years of age; they shall have been Judges in one of the Superior District Tribunals or Judges in a tribunal of one of the former States, or they shall have creditably pursued for at least five years the profession of law or have been professors of jurisprudence in some public institution.

Article 148: The Supreme Court shall exercise the following functions:

⁷ The provision concerning tenure is superseded by Art. 144.

- (1) To hear appeals according to law;
- (2) To settle questions of competency arising between two or more District Tribunals;
- (3) To take cognizance of all cases in which the Nation may be a party, or which involve a controversy between two or more Departments;
- (4) To try the high national officers who have been accused before the Senate for offenses made actionable before the court by Article 90;
- (5) To take cognizance of all cases which for questions of responsibility, violation of the Constitution or laws, or malfeasance in office may be instituted against diplomatic and consular agents of the Republic, Governors, Judges, Commanders or Generals-in-Chief of the national forces, and the heads of the principal treasury offices of the Nation;
- (6) To take cognizance of all cases affecting Diplomatic Agents accredited to the Government of the Nation as provided for in international law;
- (7) To take cognizance of all cases relating to the navigation of the sea or of navigable rivers flowing through the territory of the Nation;

And all other functions that may be assigned by law.

Article 149: To the Supreme Court is entrusted the guardianship of the integrity of the Constitution. Consequently, in addition to other powers conferred upon it by law, it shall also have the following:

To render final decision in cases where legislative acts have been vetoed by the Government as being unconstitutional or when any citizen shall question the constitutionality of any laws or decrees, provided a previous hearing is given the Attorney-General of the Nation.

Article 150: In all cases of conflict between the Constitution and a law, preference shall be given to the constitutional provision.

Article 151: The Court shall appoint and remove at pleasure its subordinate officers.

Article 152: In order to facilitate the prompt administration of justice, the national territory shall be divided into judicial districts in each of which there shall be a Superior Tribunal, the composition and functions of which shall be determined by law.

Article 153: In order to be a Judge in the Superior Tribunals one must be a citizen in full exercise of his rights, must be at least thirty years of age, and for at least three years must have exercised judicial functions or have creditably engaged in the practice of law or have taught law in a public institution.

Article 154: The provisions contained in Article 143 shall apply to Judges of the Superior Tribunals. Said Judges shall be responsible to the Supreme Court in the manner determined by law for all malfeasance in office and for the commission of all acts which compromise the dignity of their posts.

Article 155: Judges of the Superior Tribunals and their Alternates (*Suplentes*) shall be appointed by the Supreme Court from ternaries presented by the respective Department Assemblies.

Article 156: The inferior courts shall be organized and their functions and the terms of their Judges shall be determined by law.

Article 157: To be Judge of an inferior court one must be a citizen in the full exercise of rights, learned in the law, and of good reputation.

The second requisite herein prescribed shall not be required of Municipal Judges.

Article 158: Judges of inferior courts shall be responsible to their respective Superior Tribunals.

Article 159: Judicial offices shall not be cumulative, and they are incompatible with the exercise of any other office of profit or with any participation in the practice of law.

Article 160: Justices and Judges shall not be suspended from office except in the cases and in accordance with the formalities prescribed by law, or otherwise than by a judicial decree. Nor may they be transferred to other offices without vacating their judicial posts.

Salaries of Judges shall not be abolished or diminished in such a manner as to prejudice those in office when such action is taken.

Article 161: Every sentence shall be accompanied by an opinion.

Article 162: Juries for the trial of criminal cases may be instituted by law.

Article 163: Commerce Courts may be established.

Article 164: The law shall establish and organize the jurisdiction for the review of administrative decisions (*la jurisdicción contencioso-administrativa*).

TITLE XVI

PUBLIC ARMED FORCES

Article 165: All Colombians shall be required to bear arms when public necessity requires that they should do so in defense of the national independence and institutions of the country.

All exemptions from military service shall be determined by law.

Article 166: The Nation shall maintain a standing army for its

defense. The law shall determine the system of replacements in the Army as well as all matters relating to the promotion, rights, and duties of soldiers.

Article 167: Whenever the law shall fail to fix the size of the standing Army, it shall continue as fixed by Congress for the preceding biennium.

Article 168: The Army is not a deliberative body. It shall not assemble except by order of legitimate authority, or address petitions except in the interest of its better service and morale, and that in accordance with the laws governing the same.

Article 169: Soldiers shall not be deprived of their rank, honors, and pensions except in the cases and manner provided by law.

Article 170: Courts-Martial or Military Tribunals shall take cognizance, under provisions of the Military Penal Code, of all offenses committed by persons in active service and in regard to said service.

Article 171: A national militia may be organized and established by law.

TITLE XVII

ELECTIONS

Article 172: All citizens shall elect directly members of the Municipal Councils, Deputies to the Department Assemblies, Representatives to the National Congress, and the President of the Republic.

Article 173: In every election in which there are more than two individuals to be elected, such shall be done according to the limited vote system, or that of the electoral quotient, or that of the cumulative vote, or any other system that assures the proportional representation of the parties. The manner in which this is to be done shall be determined by law.

Article 174: Senators shall be elected by Department Assemblies. No member of the Assembly which makes the election may be elected Senator. Any violation of this provision renders such election null and void.

Article 175: Each Department shall constitute an electoral district for the election of Senators. No district may elect less than three Senators or more than nine, or a number less than the number which it now elects.

Article 176: The Department Assemblies shall determine the electoral districts for the election of Deputies; but in this, demarcation shall not be made in such a manner that any district shall elect less than three Deputies.

Article 177: Suffrage shall be exercised as a constitutional function. The person who votes and elects does not thereby impose any obligation on the candidate, nor does he confer any mandate upon the officer-elect.

Article 178: Whatever else may be necessary in connection with the elections and their canvassing shall be provided by law, taking care that these two functions shall be separate; it shall also define the crimes which menace the correctness and freedom of voting and shall establish a proper penal sanction.

TITLE XVIII

DEPARTMENT AND MUNICIPAL ADMINISTRATION

Article 179: For purposes of public administration the territory of the Republic is divided into Departments. Each shall be under a Governor who shall be at the same time an agent of the Executive and chief of local administration.

Article 180: In the administration of local matters the Departments shall be independent, subject to the limitations established by the Constitution.

Article 181: The Departments shall be divided into Municipal Districts. For the improvement of administration, provincial or other subdivisions may be established.

Article 182: The property and revenues of the Departments as well as those of the Municipalities are their exclusive property respectively, and they shall enjoy the same guaranties of property and revenue as are extended individuals. Such property may not be taken except in the manner prescribed for the taking of private property. The national government may not grant departmental or municipal franchises.

Article 183: The property, rights, revenues, or actions which by law or decree of the national government or by any other title belonged to the former sovereign States shall continue as the property of the respective Departments. The real property specified in Article 199 of this Constitution may be excepted from this provision.

Article 184: There shall be in each Department an administrative corporation known as the Department Assembly, which shall meet each year in the capital of the Department.

Article 185: Department Assemblies shall be composed of Deputies chosen by popular election on the basis of the population at the ratio of one Deputy for each twelve thousand inhabitants and an additional Deputy for each fraction which exceeds six thousand. The above basis

of representation as well as the time and duration of the sessions may be changed by law.

Article 186: The Assemblies shall have the following functions:

(1) To regulate by means of ordinances and in accordance with constitutional requirements primary and secondary schools and charitable institutions;

(2) To regulate and promote established industries and the introduction of new ones, importation of foreign capital, settlement of the public lands of the Department, opening of roads and navigable canals, construction of railroads, exploitation of the timber land of the Department, canalization of rivers, matters relative to local policing, supervision of district revenues and expenses as well as those relative to internal improvements—all this being done by means of ordinances and with the funds of the Department;

(3) To organize Departmental treasury offices and tax courts, elect the officials and judges thereof, and present nominations in ternary for each of the posts of prosecuting attorney as well as for their alternates (*Suplentes*) who are to be attached to the various Superior Tribunals;

(4) To erect or abolish Municipalities in accordance with a population of whatever size may be determined by law, to extend or contract municipal boundaries, always with a view to local interests. Should any neighborhood oppose such change, the conflict shall be settled by Congress;

(5) To set the number of Department employees as well as their functions and salaries;

(6) To perform all the other functions assigned by the Constitution and laws.

Article 187: The creation and abolition of Notary and Registry Offices as well as the organization and regulation of the public services rendered by Notaries and Registrars may be done by law.

Article 188: The Assemblies shall annually vote the budget of revenues and expenses of their respective Departments.

Article 189: The Department Assemblies may levy taxes under the conditions and within the limits established by law to cover the expenses of departmental administration.

Article 190: The ordinances of the Assemblies are binding as long as they are not annulled by judicial authority in the form prescribed by law.

Article 191: Individuals prejudiced by acts of the Assemblies may

resort to the competent Tribunal, which may suspend the act immediately when a grave question is involved.

Article 192: The Governor shall be invested with the following powers:

(1) To execute and cause to be executed in the Department the orders of the Government;

(2) To direct administrative action in the Department, to appoint and remove his agents, to amend and revoke their acts, and to take all measures necessary for the conduct of the several branches of administration;

(3) To be spokesman for the Department and represent it in political and administrative matters;

(4) To aid in the administration of justice as determined by law;

(5) To supervise and protect official bodies and public establishments;

(6) To approve in legal form the ordinances which may be enacted by the Department Assembly;

(7) To review the acts of Municipalities and Mayors (*Alcaldes*) for reasons of unconstitutionality or illegality, revoking the latter and remanding the former to the judicial authorities for their decision; and

Such other powers as may be conferred by law.

Article 193: The Governor may call the national forces to his aid, and the military commander shall obey his orders except where contrary dispositions have been made by the Government.

Article 194: In each Municipal District there shall be a popularly elected body known as the Municipal Council.

Article 195: The Municipal Councils shall enact such resolutions and local regulations as may be necessary for the administration of the district; they shall, in conformity with the Constitution, laws, and ordinances passed by the Assemblies, levy taxes and determine local expenditures; they shall keep an annual register of the population; they shall take a census whenever required to do so by law; they shall appoint Municipal Judges, attorneys (*personeros*), and treasurers; and perform such other duties as may be assigned by law.

Article 196: The resolutions of the Municipal Councils are binding unless annulled by judicial authority.

Article 197: Individuals prejudiced by acts of the Municipal Council may resort to a Judge, who may suspend the act immediately because of unconstitutionality or illegality.

Article 198: In every Municipality there shall be a Mayor (*Alcalde*) who shall function as agent of the Governor as well as chief of the municipal administration.

TITLE XIX

FINANCE (DE LA HACIENDA)

Article 199: The following property belongs to the Republic of Colombia:

(1) The possessions, revenues, real property, securities, taxes, and shares which belonged to the Colombian Union on April 15, 1886;

(2) The uncultivated domain, mines, and salt works which belonged to the States the property in which now vests in the Nation, without prejudice to the rights granted to third parties by the said States or granted to the States by the Nation under rights of indemnification;

(3) The mines of gold, silver, platinum, and precious stones which lie within the national territory, without prejudice to the rights acquired under previous laws by discoverers and exploiters of any of them.

Article 200: The Republic shall be responsible for the foreign and domestic debts that have been recognized or that may hereafter be recognized and for the expenses of the national public service.

The order and manner of satisfying these obligations shall be determined by law.

Article 201: No indirect tax nor any increase in this type of tax shall take effect until six months after the promulgation of the law establishing the same.

Article 202: Any modification of the import duties which has for its object the reduction of such duties shall enter into force ninety days after the law has been sanctioned, and the reduction shall take place by tenths during the following ten months.

If the modification has for its object an increase of duties, the increase shall take place by thirds during the three months following the sanctioning of the law.

This provision and that of Article 201 of the Constitution shall not limit the extraordinary powers of the Government when it is invested with them.

Article 203: The Executive shall draw up annually a budget of revenues together with an appropriation bill, and these shall be presented to Congress during the first ten days of the ordinary session in July.

Article 204: When Congress does not vote the budget for the fiscal biennium, the budget of the preceding fiscal biennium shall continue in force.⁸

⁸ This article is modified by the preceding one.

Article 205: In time of peace taxes not found in the budget of revenues shall not be levied, nor may appropriations not included in the budget of expenses be made.

Article 206: No expenditure of public money shall be made without authorization by Congress, Department Assemblies, or Municipalities; nor shall any appropriation be diverted from the object for which it was made.

Article 207: When in the judgment of the Government it becomes necessary to make an unforeseen expenditure and the Houses are in recess and have not voted the appropriation or have voted an insufficient amount, a supplemental or extraordinary credit may be made by the particular Ministry.

These credits may be authorized by the Council of Ministers upon proof of their necessity and after consultation with the Council of State.

Congress shall have power to legalize these credits.

The Government may petition Congress for credits in addition to those provided in the budget of expenses.

Article 208: The Executive may not make supplemental or extraordinary credits referred to in Article 207 of the Constitution, or make diversion of funds within the budget except under the conditions and according to the procedures provided by law.

TITLE XX

AMENDING THE CONSTITUTION

Article 209: The Constitution may be amended only by a legislative act debated and approved first by the Congress following ordinary legislative procedure; it shall again be so considered at the next annual session and approved in this session by an absolute majority of the membership of each House on its second and third readings.

CONSTITUTION
OF THE
REPUBLIC OF COLOMBIA
(Codification of 1945)

Codification of 1945

HISTORICAL BACKGROUND

THE ADMINISTRATION of Dr. Alfonso López Pumarejo ended in August, 1938. During his tenure López had aggressively pursued a progressive policy designed to help labor. He was also instrumental in bringing about the establishment of greater controls on "big business." His achievements in reorganizing the tax system were noteworthy and greatly increased the country's revenue receipts. Finally, the successful execution of his educational program did much to improve opportunities at all levels of education. Naturally, López's program and his methods of implementing it were opposed not only by the Conservatives, but also by the more moderate elements of his own Liberal party. They felt that he was going too far too fast. The moderate Liberals, however, were not alienated to the point of leaving the party at the time of election of 1938. This split was to come later.

Dr. Eduardo Santos, elected to succeed López, served as President of Colombia from 1938 until 1942. Dr. Santos, who was more moderate in his program and administration, tried very hard to effect a reconciliation of the two factions of the Liberal party. For a while his success in this was more apparent than real. When the time came for the Liberal party to choose a candidate for the election of 1942, all intraparty antagonisms again manifested themselves.

When the Liberals held their convention in 1941, they failed to nominate a candidate because of a deadlock. The moderate and extreme Liberals were in an uncompromising mood. The extremists in particular felt that Santos had not exerted himself sufficiently to develop further the progressive program begun by López. When it became evident that a candidate for the party as a whole could not be agreed upon, the extreme Liberals selected López as their candidate. This selection, while unacceptable to some of the moderates, did not alienate enough of them to prevent a Liberal victory.

Dr. López won the election and entered upon his second administration on August 7, 1942. The election of a Liberal did not mean that the party was united; López won in spite of the division in the party. The indifference of the Conservatives in this election accounts in part for his success. As soon as López took office, the more extreme Conservatives began a vigorous attack upon his domestic and foreign

policy. Moreover, as time went on, the intraparty friction among the Liberals was also intensified.

Early in 1944 the very articulate minority of Conservative extremists under the leadership of Dr. Laureano Gómez spoke openly of revolution. Nothing came of this threat because Gómez by no means had the support of the Conservatives generally. The party as a whole would not entertain the idea of resorting to such measures. Nevertheless, the threat of the Conservative minority did temporarily unite the Liberals. Gómez's talk of revolution was another symptom of unrest.

Before the year (1944) was out, there was more evidence of the unrest that was later to cause the Liberal party to lose control of the government. In July a group of Army men kidnaped President López, and their leader, Lieut. Col. Diógenes Gil, proclaimed himself President. The Army, however, did not respond to the colonel's call but remained loyal. Within forty-eight hours the conspirators were under arrest; their plot had failed. It seems improbable that the Conservative extremists had any hand in this business. It has been suggested that the military coup was a result of growing discontent in the Army, which was jealous of the support President López had been giving the national police. The preference shown the police had made the Army apprehensive of its position.¹

Upon the renewal of diplomatic relations, Russia did not make a very fortunate choice in the diplomatic representative sent to Bogotá. The idea of more intimate relations with Russia in itself was not very palatable to the Conservatives and to a good number of the more moderate Liberals. The anti-López elements in the country looked upon the López leftist policy of government and the presence of a large and far from self-effacing Russian mission in the country as a combination having too high a potential for future trouble. Whether there was any justification for this feeling is beside the point. In politics what often counts most is that which is believed to be, not necessarily that which is. Whether well founded or not, the suspicion that López had pro-Communist leanings did contribute to political instability, confusion, and antagonism.

By July, 1945, the intra-Liberal party friction, as well as the Conservative-Liberal antagonism, had become so serious that on the nineteenth President López resigned in order, as he said, to restore the national harmony. His resignation was accepted, and Congress selected

¹ Arthur P. Whitaker (ed.), *Inter-American Affairs, 1944* (New York, 1945), p. 35.

Dr. Alberto Lleras Camargo to discharge the presidential duties for the remainder of the term, which was to end on August 7, 1946. The split in the Liberal party continued. In the election the moderate Liberals ran Jorge Gaitán as their candidate, whereas the López Liberals supported Gabriel Turbay. All efforts to obtain a compromise candidate failed; hence on May 5, 1946, the Conservatives, profiting from this fragmentation of the Liberal party, won control of the government. Dr. Mariano Ospina Pérez was elected to the presidency for the term 1946-1950. He is the first Conservative party member to hold that office since 1930.

POLITICAL ORGANIZATION

The most extensive number of amendments adopted since the Codification of 1936 was added to the constitution in 1945.² The text which follows is a codification of these amendments and those adopted in 1938 and 1944.

One of the most important additions to the powers of Congress was that granting the power "to draw up plans and programs for the improvement of the national economy as well as plans and programs for all public works which are to be built or continued in operation" (Art. 76[4]). The granting of the planning power in turn necessitated the modification of several others. Formerly Congress had had the power "to decree the building or continuance of public works" and the power "to encourage useful and beneficial works deemed worthy of support and stimulation" (1936: 69[16] and 69[17]). Under the terms of the present codification these two last-mentioned powers must be exercised "in accordance with the plans and programs established by law," and the discretion of Congress in their exercise is thereby limited (Art. 76[19] and [20]).

The power to establish over-all plans for public works and in the interest of the national economy is a logical adjunct to the power of the State to intervene in public and private business for the purpose of rationalizing production, distribution, and consumption.³ The planning power rounds out the power to intervene.

Another important addition to the powers of Congress to be found in the Codification of 1945 is based upon an amendment adopted in 1938. This amendment appears as Article 77 of the present codifi-

² Legislative Act No. 1 of 1945 (República de Colombia, *Acto legislativo y leyes de 1945*, Bogotá, 1945, pp. 3-31).

³ The power to intervene for the purpose of rationalizing the economy was granted in the 1936 amendments (1936: 28) and retained in the Codification of 1945 (Art. 32).

cation. It is provided that "police measures may be enacted for the purpose of making travel regulations uniform throughout the Republic." This constitutes an expansion of the national government's police power.

Back in 1910 the governments of the Departments were given the power to promote and encourage the development of industries within their respective jurisdictions. Along with this went the power to enact local police measures (1936: 186[2]). The governments of the Departments exercised these powers in a manner which was detrimental to the national economy. By use of the police power they erected obstacles to the free movement of persons and goods within the country for the protection of the industries that they were promoting. In short, there resulted a species of local economic isolation or protectionism. The amendment of 1938 is designed to give Congress the authority to correct this condition. Now that Congress has the authority to make "travel regulations (*reglamentos de tránsito*) uniform throughout the Republic," it is in a position to remove the obstacles to the free movement of persons and goods.⁴

The split congressional session which had been instituted in 1936 is no longer used. Congress now assembles annually in ordinary session on July 20. The session is constitutionally limited to 150 days.

Several significant changes in the legislative procedure are to be found in the Codification of 1945. A bill now goes through two readings instead of three, one of these two readings taking place in the standing committee to which the bill was originally referred. Bills may not be debated upon the floor until approved by such committees (Arts. 79 and 81). Formerly any bill, except one dealing with the civil code or with judicial procedure, could be introduced by any member. Now certain types of important legislation may be introduced only by a standing committee or by a Minister of State, i.e., bills dealing with any of the codes, the national budget, plans for the national economy or public works, or with alterations in the territorial jurisdiction of the political subdivisions of the country (Art. 80). This last-mentioned provision can go far to protect these highly important and complex fields of legislation against haphazard and unco-ordinated development to which they would be liable if any member could introduce bills of this nature. In other words it places the responsibility for initiating such legislation upon a more restricted group of persons and thereby increases the opportunities for specialization and the advantages which naturally accrue

⁴ See Tulio Enrique Tascón, *Derecho constitucional colombiano* (3d ed.; Bogotá, 1944), p. 343.

therefrom. As an offset to this power and a protection against its abuse, however, bills of this type require the approval of a *majority of the membership* of the standing committee and of the respective house. Other types of bills may be approved by a *majority of a quorum*.

The position of the President in the legislative process has also been modified to some extent. Under the provisions of the Codification of 1936 the presidential veto of *any* bill could be overcome by a majority of the membership of the two houses (1936: 81). Article 88 of the present codification makes an important change in the majority required to overcome a veto. A two-thirds majority of the membership of the two houses is now required to overcome the veto of a bill dealing with any of the codes, the national budget, plans for the national economy or public works, or with alterations in the territorial jurisdiction of the political subdivisions. The veto of any other type of bill may still be overcome by a simple majority of the membership.

The other change in presidential participation in the legislative process was the granting of the power to designate specific bills as "urgent." The declaration of urgency by the President places upon Congress the responsibility to give the bill precedence over other legislative business (Art. 91).

A few changes were made in the executive branch of government. The Attorney-General of the Nation is now selected by the House of Representatives from a ternary presented by the President (Art. 144). Formerly the President made this appointment. The term of office for Presidential Alternate (*Designado*) has been increased. In 1936 Congress selected two Presidential Alternates each year. Article 124 of the present codification provides that Congress shall select only one and that his term shall be for two years.

In the Codification of 1945 a very important addition was made to the provisions dealing with the executive branch of government. Articles 59 and 60 give a constitutional basis for the existence of the office of the Comptroller-General of the Republic and define the functions of that office. The office had been created by an act of Congress in 1923 and was continued upon this statutory basis until the amendment of 1945. The contributions of this office to the improvement of governmental operations and efficiency have been noteworthy. By 1945 it was felt that it should have a legal basis more secure than a mere act of Congress. To give greater assurance of its continued existence, the office of the Comptroller-General was provided for by constitutional amendment, and its protection against congressional ma-

nipulation was thereby increased.⁵ The Comptroller-General, who is selected by the House of Representatives for a term of two years, has been assigned the usual functions.

Two important innovations were made in the provisions dealing with the judicial branch of the government. The function of judicial review was divided between the Supreme Court and the Supreme Administrative Tribunal (Council of State). Article 149 of the Codification of 1936 gave the Supreme Court the power of final decision when acts of the legislature were objected to by the Government on the grounds of their being unconstitutional. This power also extended to cases in which the constitutionality of any law or decree was questioned by a citizen. In other words, the Supreme Court was the agency of final decision in all such cases.

By the terms of the Codification of 1945 the Supreme Court's jurisdiction extends to three types of cases. It reviews cases involving laws objected to by the Government. It also has jurisdiction over any case in which a citizen questions the constitutionality of any law. Finally, the court passes upon the constitutionality of any decree issued by the Government in connection with governmental contracts or with the exercise of extraordinary powers by the President (Art. 214). But when any other kind of Government decree is brought into question, the Supreme Administrative Tribunal passes upon its constitutionality. All of which is to say that the power to pass upon the constitutionality of the Government's decrees, with two exceptions, has been removed from the Supreme Court's jurisdiction and given to the Supreme Administrative Tribunal.

When the administrative court system was set up in 1914, the failure to provide for a Tribunal of Conflicts was a serious defect; it was not corrected until 1945. All conflicts of jurisdiction between the administrative and ordinary courts were resolved by the Supreme Court, which could not be entirely impartial in this matter. In other countries a Tribunal of Conflicts, independent of both court systems, has proved to be the most efficient manner of handling this delicate problem. Article 217 of the present codification empowers Congress to set up such a court, the establishment of which should increase the independence of the administrative court system.

Before this introduction is concluded, a modification of the government's power to intervene in business and industry should be mentioned. In the introduction to the Codification of 1936 it was pointed out that

⁵ See Carlos H. Pareja, *Curso de derecho administrativo* (2d ed.; Bogotá, 1939), I, 113 ff.

an amendment of that year gave the government the power to intervene in private and public business and industry for the purpose of rationalizing production, distribution, and consumption. At that time there was no limitation placed upon the government's use of this authority except that any laws made in pursuance thereof had to be approved by a majority of the membership of the two houses rather than by a majority of a quorum (1936:28). The Codification of 1945 places a greater limitation upon the Government, a limitation as to when the power may be exercised. Article 32 provides that the power of intervention shall be suspended while the President is vested with extraordinary powers. The wisdom of this limitation is obvious.

A translation of the text of the *Codification of 1945* follows.

CONSTITUTION OF THE REPUBLIC OF COLOMBIA

In the Name of God, Supreme Source of all Authority, and with the object of strengthening the national unity and of insuring the benefits to be derived from justice, liberty, and peace, we have agreed to decree and do hereby decree the following

CONSTITUTION OF COLOMBIA

TITLE I

THE NATION AND THE TERRITORY

Article 1: The Colombian Nation is reconstituted a unitary Republic.

Article 2: Sovereignty is vested essentially and exclusively in the Nation and from it emanate all the public powers which shall be exercised within the limits prescribed by this Constitution.

Article 3: The boundaries of Colombia with neighboring countries are:

With Venezuela, those defined in the arbitral award made by the King of Spain, March 16, 1891; with Brazil, those defined in the treaties of April 24, 1907, and November 15, 1928; with Perú, those defined in the treaty of March 24, 1922; with Ecuador, those defined in the treaty of July 15, 1916; and with Panamá, those defined in the treaty of August 20, 1924.

The islands, isles, shoals, rocks, and banks in the adjacent seas, the Island of Malpelo, and the archipelago of San Andrés and Providencia likewise form part of Colombia.

The boundaries between the Republic and contiguous countries may be altered only by public treaties duly approved by Congress.

Article 4: The territory together, with the public property therein contained belongs exclusively to the Nation.

Article 5: The national territory is divided into Departments, Intendancies, and Subdelegations (*Comisarias*), each of which is further divided into Municipalities or Municipal Districts.

The formation of new Departments may be decreed by law by dismembering existing ones, or by other means, providing always that the following conditions are met:

(1) That such action shall have been requested by three fourths of the Municipal Councilors of the area of which the new Department is to consist;

(2) That the new Department shall have at least 250,000 inhabitants and an annual revenue of 500,000 pesos; and

(3) That the Department or Departments from which such territory may be taken shall each continue to have a population of at least 250,000 inhabitants and an annual revenue of 500,000 pesos.

Territory belonging to one Department may by law be added to another contiguous Department or Departments, taking into account the wishes of the inhabitants of said territory and after prior notification to the Governors of the Departments concerned.

Whatever may be necessary to carry this provision into effect shall be provided by law.

Uncertain boundary lines shall be determined by boundary commissions appointed by the Senate.

The Intendancies and Subdelegations (*Comisaría*s) shall be under the immediate control of the Government, and Congress shall have power to provide for their administrative organization and for the special regime of the Municipalities of which they are composed.

The law may create or abolish Intendancies and Subdelegations, annex them partially or wholly to Departments, enact special statutes for them, and regulate their electoral organization and their judicial and administrative courts.

Article 6: The Intendancy of the Chocó may by law be erected into a Department although it lacks the number of inhabitants required by Article 5, subsection 2, provided such action in no way affects the territories of the Departments of Antioquia, Caldas, and the Cauca Valley.

Article 7: Beside the general division of territory there shall be others within the boundaries of each Department for purposes of the public service.

The several divisions relating to finance, military affairs, and public education may not coincide with the general division.

TITLE II

THE INHABITANTS: NATIONALS AND ALIENS

Article 8: The following persons are declared to be Colombians:

(1) By birth:

(a) Those who are natives of Colombia under either of the following circumstances: the father or mother being a native Colombian

or a Colombian national, or, being children of aliens, they are domiciled in the Republic;

(b) Children of a Colombian father or mother who were born abroad but who shall afterwards establish their domicile in the Republic.

(2) By adoption:

(a) Aliens who apply for and obtain letters of naturalization;

(b) Hispano-Americans and Brazilians by birth who, with permission of the Government, ask to be registered as Colombians by the municipal authorities of the place wherein they reside.

Article 9: The status of Colombian national is forfeited by obtaining letters of naturalization in a foreign country and establishing a domicile abroad; however, it may be recovered in accordance with laws enacted for that purpose.

Article 10: It is the duty of all nationals and aliens in Colombia to live in submission to the Constitution and laws and to respect and obey the authorities.

Article 11: Aliens shall enjoy in Colombia the same civil rights which are granted Colombians. The enjoyment of certain civil rights by aliens, however, may for reasons of public order be subjected to special conditions or denied by law.

Aliens shall enjoy in the territory of the Republic the same guarantees granted nationals subject to whatever limitations may be established by the Constitution and laws.

Political rights are reserved to nationals.

Article 12: The powers, recognition, and in general the governance of corporations and other juridic persons shall be determined by Colombian law.

Article 13: Any Colombian who is captured in a war against Colombia with arms in hand shall be tried and punished as a traitor even though he has lost his status as a national.

Naturalized persons and aliens residing in Colombia shall not be compelled to bear arms against the country of their origin.

Article 14: Colombians twenty-one years of age are citizens.

Loss of nationality carries with it loss of citizenship. Such is also lost or suspended by virtue of judicial sentence in cases determined by law.

Those who have lost citizenship may solicit rehabilitation.

Article 15: The possession of full rights of citizenship is an indispensable condition precedent for voting and election to office and for employment in any public office carrying with it authority or jurisdic-

tion. However, the right to vote and eligibility to popularly elective office are reserved to male citizens.

TITLE III

CIVIL RIGHTS AND SOCIAL GUARANTEES

Article 16: The authorities of this Republic are established in order to protect the lives, honor, and property of all persons residing in Colombia and to assure the fulfilment of the social duties of the State and of individuals.

Article 17: Labor is a social obligation, and it shall enjoy the special protection of the State.

Article 18: The right to strike is guaranteed except in the public services. Its exercise shall be regulated by law.

Article 19: Public assistance is a function of the State. It shall be given to persons who, being physically incapacitated for work, lack the means of self-support or the right to demand the same of other persons.

The manner in which public assistance shall be given and those cases in which the State shall give it directly shall be determined by law.

Article 20: Private persons are not responsible to the authorities except for violations of the Constitution and laws. Public officers are responsible in the same manner as well as for exceeding their powers or for failing to execute them.

Article 21: In case of a manifest violation of any constitutional provision to the injury of any person a superior's order shall not exempt from responsibility the agent who may execute it.

The military on active service shall not be held to this responsibility. With respect to them, the superior who gives the order shall alone be responsible.

Article 22: There shall be no slaves in Colombia.

Any person being a slave who shall enter the territory of the Republic shall be free.

Article 23: No one shall be molested in his person or family, or imprisoned or arrested, nor shall his domicile be searched unless upon a written warrant from competent authority issued with all legal formalities and for an offense previously defined by law.

In no case may he be detained, imprisoned, or arrested for purely civil offenses or obligations, save that he may be required to give security.

Article 24: A person taken *in flagrante delicto* may be arrested and taken before a Judge by any other person. If the police pursue him and

he takes refuge in his own dwelling, they may enter for the purpose of apprehending him; and if he seeks asylum in the house of another, requisition for him should first be made of the owner or tenant thereof.

Article 25: No person shall be compelled to testify in criminal or police proceedings against himself or against his relatives to the fourth degree of consanguinity or the second degree of affinity.

Article 26: No one may be prosecuted except for the violation of laws enacted prior to the offense with which he is charged and before a competent tribunal in accordance with all the formalities applicable to his case.

In all criminal matters the accused shall have the benefit of the laws which most leniently affect the charge against him, although enacted after the commission of the offense.

Article 27: The preceding article notwithstanding, punishments may be inflicted without previous trial and within the precise limits set forth by law by the following officers:

(1) Those officers exercising authority or jurisdiction who have the power to punish by fine or imprisonment for injury or disrespect toward them in the discharge of their official duties;

(2) Military chiefs who may inflict immediate punishments in order to subdue a military insubordination or mutiny or to maintain discipline in the face of the enemy;

(3) Masters of ships who, not being in port, may exercise the same authority in order to prevent the commission of crime on board.

Article 28: Even in time of war no person may be punished under an *ex post facto* law, but only in accordance with a law, order, or decree by which the act shall have been previously prohibited and the punishment prescribed.

Even in time of peace this provision shall not prevent the Government, after previous consultation with the Ministers, from ordering the arrest or detention of persons seriously suspected of having committed a crime against the public peace.

Article 29: The legislature may not impose the death penalty in any case.

Article 30: Private property and other rights legally acquired in accordance with the civil laws by natural or juridic persons shall be guaranteed, nor may they be disavowed by later laws. When the enforcement of a law passed for reasons of public utility or social interest conflicts with the rights of individuals, private interests must give way to the public or social interests.

Property is a social function which implies obligations.

For reasons of public utility or social interest, as defined by the legislature, property may be expropriated by judicial decree with prior indemnification.

Nevertheless, the legislature, for reasons of equity, may deny indemnification by means of an absolute majority vote of the members of both Houses.

Article 31: No law establishing a monopoly may be executed until the individuals who may be deprived of the exercise of a legitimate business thereby have been fully indemnified.

No monopoly may be established except by virtue of law and until a condemnation proceeding has been had.

Privileges may be granted only in connection with useful inventions and with agencies of communication.

Article 32: By means of legislation the State may intervene in the exploitation of public and private businesses and industries for the purpose of rationalizing production, distribution, and consumption of goods, or to give labor the just protection to which it has a right.

Such intervention may not be made during the exercise of those powers referred to in Article 76, subsection 12 of this Constitution.

Article 33: In time of war and solely for the purpose of effecting the restoration of public order, the necessity for expropriation may be decreed by authorities not vested with judicial power and without prior indemnification.

In such case, real property may be occupied only temporarily either to meet the necessities of war or to provide for it with the revenues of the occupied property as a pecuniary penalty imposed on the owners according to law.

The Nation shall always be responsible for expropriations made by the Government or its agents.

Article 34: The penalty of confiscation may not be imposed.

Article 35: Literary and artistic productions shall be protected as personal property during the lifetime of the author and for eighty years thereafter, subject to such formalities as may be prescribed by law.

This same guarantee is offered to owners of works published in Spanish-speaking countries without the necessity of declaring it by means of international conventions provided the said countries extend reciprocal treatment in their legislation.

Article 36: Gifts *inter vivos* or by testament made in accordance with law for purposes of social interest may not be changed or modified by the legislature. The Government shall supervise the management and expenditure of such gifts.

Article 37: In Colombia there shall be no real estate which may not be freely transferred, nor shall there be any irredeemable obligations.¹

Article 38: All correspondence entrusted to telegraph companies and post offices shall be inviolable. Letters and private papers shall not be intercepted or examined except by order of a competent officer in such cases and with such formalities as may be provided by law, and for the sole purpose of procuring testimony in judicial investigations.

The presentation of account books and other papers may be demanded for purposes of tax investigation and in cases of State intervention.

Charges may be made for the circulation of printed matter through the post offices, but such circulation shall never be prohibited in time of peace.

Article 39: Everyone is free to select a profession or employment. Certificates of fitness as well as the regulation of professions may be provided by law.

The authorities may inspect professions and employments in the interest of public morals, security, and health.

The production and consumption of liquors and fermented beverages may be restricted by law.

The charges and regulations of transport agencies and other public services may be revised and supervised by law.

Article 40: Henceforth, only those holding a law degree may be registered as attorneys.

No one may represent himself or another in any litigation unless he is a registered attorney; however, exceptions may be made by law.

Article 41: Freedom of instruction is guaranteed. The State, however, shall have the supreme power of inspecting public and private educational institutions in order to assure the advancement of proper social and cultural ends and the best intellectual, moral, and physical development of those being educated.

Primary education shall be gratuitous in state schools and shall be obligatory to whatever grade the law may prescribe.

Article 42: The press is free in time of peace, but it shall be responsible under law for injuries to personal honor and for disturbance of the social order and public peace.

No periodical publication shall receive any pecuniary aid from other governments or foreign companies without the permission of the Government.

¹ This article is modified by the provision in Art. 50.

Article 43: Only the Congress, Department Assemblies, and Municipal Councils may impose taxes in time of peace.

Article 44: The formation of companies, associations, and foundations which are not contrary to morals or the legal order is permitted. Associations and foundations may obtain recognition as juridic persons.

In order that they may enjoy the protection of the laws, all religious associations shall present to the civil authorities their authorization issued by their respective ecclesiastical superiors.

Article 45: All persons have the right to present respectful petitions to the authorities, whether for reasons of public or private interest, and to receive prompt consideration thereof.

Article 46: All classes of persons may meet in peaceful assemblies. The authorities may disperse all assemblies which degenerate in disorder or tumult or which obstruct the public highways.

Article 47: All popular political organizations of a permanent character are forbidden.

Article 48: Only the Government may import, manufacture, and possess arms and munitions of war.

No person shall be permitted to carry arms in towns without permission of the authorities. This permission shall in no case be given to persons attending political meetings, elections, or the sessions of public assemblies or corporations, whether they participate therein or are present only as spectators.

Article 49: Any new emission of fiat paper money is absolutely prohibited.

Article 50: The law shall determine whatever may be necessary relative to the civil status of persons and the rights and duties thereof. Homestead laws may be enacted.

Article 51: The responsibility to be incurred by public officers of all classes who invade the rights guaranteed in this title shall be determined by law.

Article 52: The provisions contained in this title shall be incorporated in the Civil Code as a preliminary title and may not be altered except by an act amending the Constitution.

TITLE IV

RELIGION AND THE RELATIONS OF CHURCH AND STATE

Article 53: The State guarantees liberty of conscience.

No one shall be molested for his religious opinions, or compelled to profess beliefs or observe practices contrary to his conscience.

The liberty of all cults not contrary to Christian morals or law is guaranteed. Acts contrary to Christian morals or subversive of the public order done in connection with or under the pretext of the exercise of any cult shall be subject to ordinary law.

The Government may celebrate with the Holy See, subject to subsequent approval by Congress, conventions for the regulation of the relations between the State and the Catholic Church on bases of reciprocal deference and mutual respect.

Article 54: Sacerdotal functions are incompatible with those of public political office. Catholic priests may, nevertheless, be employed in public education and charity.

TITLE V

BRANCHES OF PUBLIC POWER AND THE PUBLIC SERVICE

Article 55: The branches of public power are the Legislative, the Executive, and the Judicial (*Jurisdiccional*).

Congress, the Government, and the Judges have separate functions, but they collaborate harmoniously in the realization of the ends of the State.

Article 56: Congress is composed of the Senate and the House of Representatives.

Article 57: The President of the Republic and the Ministers of State or the chiefs of administrative departments, and in each individual action the President and the Minister or department chief involved, constitute the Government.

No action taken by the President, except that of appointing or removing Ministers of State or chiefs of administrative departments, shall have any force or validity unless it is countersigned and communicated by the Minister or chief of the department concerned, which Minister by such action makes himself responsible therefor.

Article 58: The Supreme Court, the Superior District Tribunals, and other Tribunals and Courts which may be established by law administer justice.

The Senate may exercise certain judicial functions.

Justice is a public service to be rendered by the Nation.

Article 59: The Comptroller-General of the Republic shall check upon the fiscal affairs of the Administration.

The Comptrollership shall be an office of accountancy and fiscal

supervision, and it shall exercise no administrative functions other than those inherent in the development of the office itself.

The Comptroller-General of the Republic shall be elected by the House of Representatives for a term of two years.

Article 60: The functions of the Comptroller-General shall be determined by law. He shall, however, have the following special powers:

(1) Keeping the general accounts of the Nation, including that of the domestic and foreign public debt;

(2) Prescribing accounting methods for all national offices and the manner in which responsible officials shall render their accounts;

(3) Requiring reports from public officials, national, departmental, or municipal, concerning their fiscal affairs;

(4) Reviewing and closing the accounts of the public treasury;

(5) Selecting the personnel of his agency as may be provided by law.

Article 61: No person or corporation shall in time of peace exercise at the same time political or civil and judicial or military authority.

Article 62: The law shall determine all cases in which incompatibility of functions exists; the cases relating to the responsibility of public officers and the manner of making it effective; the qualifications and necessary antecedents requisite for the exercise of certain employments in cases not provided for by the Constitution; the conditions for promotion and retirement; and the kinds or classes of civil or military services that shall be entitled to pensions from the public treasury.

Article 63: There shall be no office in Colombia the duties of which are not defined by law or regulation.

Article 64: No one may receive more than one salary payable by the public treasury or by businesses or institutions in which the State has a principal part except in those special cases determined by law. The term "public treasury" is to be understood as that of the Nation, the Departments, and the Municipalities.

Article 65: No public officer shall enter upon the discharge of his office until he has taken an oath to sustain and defend the Constitution and to perform the duties of his office.

Article 66: No Colombian in the service of Colombia shall, without the permission of the Government, receive from a foreign government any honor or gift under penalty of forfeiting his office.

Article 67: No Colombian may receive from a foreign government any employment or commission near the government of Colombia without having previously obtained necessary authorization from the latter.

TITLE VI

SESSIONS AND POWERS OF CONGRESS

Article 68: The legislative Houses shall meet in ordinary session the twentieth of July of each year in the capital of the Republic.

If for any reason they are unable to assemble on the date indicated, they shall meet as soon as possible within the year.

The ordinary sessions of Congress shall continue for 150 days.

Congress may also be called into extraordinary session by the Government for such time as the latter may decide. In this case Congress may not occupy itself with any business other than that which the Government submits to its consideration.

Article 69: The two Houses shall be opened and closed publicly and at the same time.

Article 70: The two Houses shall not open their sessions or deliberate with less than one third of their members present.

The President of the Republic in person or acting through his Ministers shall open and close the Houses.

This ceremony is not essential to the legal exercise of congressional functions.

Article 71: When on the arrival of the day for the assembling of Congress it is found that the requisite quorum is not present, those members present, sitting in preparatory or provisional council, shall impose such fines upon absent members as may be prescribed by the respective Houses, and the sessions shall be opened as soon as the requisite number of members is present.

Article 72: Congress may appoint standing committees from among its membership to study, during congressional recess, matters pending in Congress and to formulate bills of amendment (*proyectos de reformas*) recommended to them by the Executive or Legislative Branches.

Article 73: By agreement of the two Houses, Congress may assemble at another place, and in case of public disturbance it may assemble at a place designated by the President of the Senate.

Article 74: Congress shall meet in joint session only for the purpose of inducting the President of the Republic into office and of electing Presidential Alternates (*Designados*).

In such cases, the Presidents of the Senate and the House shall be President and Vice-President of the Congress respectively.

Article 75: Any meeting of the members of Congress for the purpose of exercising the Legislative Power which is held in violation of the constitutional provisions shall be illegal, any actions taken shall be void,

and the individuals participating in the deliberations shall be punished according to law.

Article 76: The power to enact legislation is vested in Congress. By means of laws it exercises the following powers:

- (1) To interpret, amend, and repeal pre-existing laws;
- (2) To enact codes of all kinds and to alter their provisions;
- (3) To enact measures necessary for the establishment of a national budget;
- (4) To draw up plans and programs for the improvement of the national economy as well as plans and programs for all public works which are to be built or continued in operation;
- (5) To modify the general division of the territory in accordance with Article 5 of this Constitution; to establish and change whenever necessary the other territorial divisions mentioned in Article 7; and to fix the bases and conditions necessary for the creation of Municipalities;
- (6) To adopt regulations for Congress and for each of the Houses;
- (7) To confer special powers upon Department Assemblies;
- (8) To change the residence of the high national authorities whenever under extraordinary circumstances and for grave reasons it may be deemed necessary for public convenience;
- (9) To create all offices required by the public service and to fix their respective salaries;
- (10) To regulate the public service determining all matters referred to in Articles 62 and 132 and in any other constitutional provision;
- (11) To authorize the Government to make contracts, negotiate loans, alienate national property, and exercise other functions within constitutional limits;
- (12) To invest the President of the Republic temporarily with such extraordinary powers as necessity may require or the public good demand;
- (13) To provide for the national revenues and to determine the expenses of administration;
- (14) To examine the national debt and arrange for servicing it;
- (15) To decree extraordinary taxes when necessary;
- (16) To approve or reject contracts or agreements entered into by the President of the Republic with private persons, companies, or po-

litical entities wherein the Nation is interested if such have not been previously authorized, or if the formalities prescribed by Congress have not been complied with, or if any condition contained in the law authorizing them has been disregarded;

(17) To fix the weight, type, and denomination of money and to regulate the system of weights and measures;

(18) To organize the public credit;

(19) To decree the building or continuance of public works in accordance with the plans and programs established by law;

(20) To encourage useful and beneficial works deemed worthy of support and stimulation, with strict adherence, however, to the proper plans and programs;

(21) To decree public honors to citizens who have rendered distinguished service to the fatherland and to decide what monuments should be erected;

(22) To approve or reject treaties entered into by the Government with foreign powers;

(23) To grant amnesties and general pardons for political offenses by a vote of two thirds of the members of each House for grave reasons of public convenience. In case the recipient of a pardon is thereby relieved of civil responsibility to any person, the State shall be obligated to indemnify that person;

(24) To limit or regulate the appropriation or conveyance of waste lands.

Article 77: Police measures may be enacted for the purpose of making travel regulations uniform throughout the Republic.

Article 78: The following acts are prohibited to Congress and to either of its Houses:

(1) To bring moral compulsion (*dirigir excitaciones*) upon public officers;²

(2) To enact laws or adopt resolutions concerning matters exclusively within the jurisdiction of other branches of government;

(3) To vote approval or censure of any official act;

(4) To require the Government to furnish the instructions given to Diplomatic Agents or to give information relative to negotiations of a secret nature;

(5) To grant any person or entity any reward, indemnity, pension, or other pecuniary consideration that is not intended to satisfy credits

² See p. 374 n. 2.

or rights recognized by pre-existing law, except for that provided in Article 76, subsection 18;³

(6) To enact laws of banishment or persecution against persons or corporations.

TITLE VII

CONCERNING THE ENACTMENT OF LAWS

Article 79: Laws may originate in either House and may be introduced by any member thereof or by the Ministers of State. However, they may not be debated in a particular House until after being considered and approved by the proper standing committee.

Article 80: The following are excepted from the provisions of the preceding article:

(1) Legislation relative to revenue and to the Public Ministry (*Ministerio Público*), which may originate only in the House of Representatives;

(2) Legislation referred to in subsections 2, 3, 4, and 5 of Article 76, which may not be enacted or amended except by virtue of a bill approved by the proper standing committee of one of the Houses or introduced by the Ministers of State.

In addition to the regular committees, there shall be in each House permanent committees charged with the functions of drafting and approving the bills referred to in subsection 2 of this article, incorporating any amendments to all classes of bills which may be introduced, and approving the same in committee meeting, which shall constitute the first reading.

The number of members for each committee shall be determined by law. They shall be elected by their respective Houses for terms of not less than one year's duration.

Article 81: No bill shall become law unless:

(1) It shall have been approved by the proper committee of each House by an absolute majority of votes on the first reading;

(2) It shall have been approved by each House by an absolute majority of votes on the second reading;

(3) It shall have been sanctioned by the Government.

For the enactment of laws which modify, amend, or annul those mentioned in subsections 2, 3, 4, and 5 of Article 76, an absolute ma-

³ The provision referred to is numbered subsection 20 in this codification.

jority of the membership of the standing committee as well as an absolute majority of the membership of each House is required.

The acceptance of all bills and their approval by the standing committees on the first reading shall be done on separate days.

A bill which is rejected on its first reading may be considered by the House upon demand by its author, by any member of the committee, or by the Government. If the decision of the committee is disapproved by an absolute majority vote in the respective House, the bill shall be submitted to another standing committee for approval on its first reading in order that it may be reported back for the second reading.

Article 82: The attendance of an absolute majority of the membership of a standing committee and of the respective House is necessary for approval of all bills on their first and second readings.

Article 83: The Government may take part in all legislative debates through the Ministers of State.

Article 84: Justices of the Supreme Court of Justice, Councilors of State, the Comptroller-General of the Republic, and the Attorney-General of the Nation may participate in the debates of the Houses and in the committee discussions in such cases as may be determined by law.

Article 85: After a bill has been approved by both Houses, it shall be sent to the Government; and if the latter approve it also, it shall be promulgated as law.

If the bill is not approved, the Government shall return it with objections to the House in which the bill originated.

Article 86: The President of the Republic shall be allowed a period of six days within which to return a bill with objections provided it does not contain more than fifty articles; ten days if the bill contains from fifty-one to two hundred articles; and fifteen days if the bill contains more than two hundred articles.

If the President, after the expiration of these periods of time, has not returned the bill with objections, he must approve and promulgate the law. But if the Houses adjourn within the periods of time prescribed, the President must publish the bill with his approval or objections within ten days after the Congress has adjourned.

Article 87: A bill objected to as a whole shall be returned for reconsideration by the Houses on the second reading. If it has been objected to only in part, it shall be reconsidered by the proper committee on its first reading for the sole purpose of deliberating upon the objections of the Government.

Article 88: The President of the Republic shall approve, without

power to present new objections, a bill which upon reconsideration was adopted by an absolute majority of the members of each House.

However, when objections are made to any of the bills referred to in subsection 2 of Article 80, the decisions of the committee and of the respective House must be made by a two-thirds vote of the membership of each.

Article 89: If the Government fails to approve bills under the terms and according to the conditions established by this title, it shall be the duty of the President of the Congress to approve and promulgate the same.

Article 90: If a bill is objected to on the grounds of unconstitutionality, it shall be excepted from the provisions of Article 88. In this event, if the Houses insist, the bill shall be referred to the Supreme Court, which shall within six days decide upon its constitutionality. An affirmative decision by the Court obligates the President to approve the law. If the decision is negative, the bill shall fail.

Article 91: The President of the Republic may indicate that the consideration of a bill is urgent, in which case the respective House shall decide upon it within thirty days. A statement of urgency may be repeated at all stages of the bill's progress; if the President insists upon the bill's urgency, it shall take precedence over all other business until the respective House shall have decided upon it.

Article 92: The text of all laws shall begin with this formula: *The Congress of Colombia decrees—*

TITLE VIII

THE SENATE

Article 93: The Senate shall be composed of members chosen on the basis of the population of the Republic calculated at the ratio of one Senator for each 190,000 inhabitants and an additional Senator for each fraction amounting to not less than 95,000 inhabitants. Each time a new general census of the Republic indicates an increase in population of at least 500,000 persons, the number of persons represented by one Senator shall automatically be increased by 40,000.

In no case shall any Department elect less than three Senators, or less than the number to which it is now entitled.

In cases of temporary or permanent vacancy, the places of Senators shall be filled by Alternates (*Suplentes*) in accordance with the order in which they appear on the election lists. The number of Alternates shall be equal to the number of Senators.

Article 94: To be a Senator it is necessary that one be a native-born Colombian, in full exercise of the rights of citizenship, and more than thirty years old; in addition he shall have held any one of the following offices: President of the Republic, Presidential Alternate (*Designado*), Member of Congress, Minister of State, Chief of a Diplomatic Mission, Governor of a Department, Judge of the Supreme Court or of a Superior Tribunal, Councilor of State, Attorney-General of the Nation, Comptroller-General of the Republic, a university professor for at least five years, or have practiced a profession requiring a university degree.

Article 95: Senators shall continue in office for four years, and they shall be eligible indefinitely for re-election.

Article 96: The Senate shall take cognizance of all accusations brought by the House of Representatives against officers in accordance with Article 102, subsection 4.⁴

Article 97: In all trials by the Senate the following rules shall be observed:

(1) Whenever an accusation is publicly made, the accused shall *ipso facto* be suspended from office;

(2) If the accusation charges offenses committed in the performance of duties or unfitness on account of misconduct, the Senate may not impose any other penalties than removal from office or the temporary or permanent deprivation of political rights; but if the accused is charged with offenses which merit other penalties, he shall be tried by the Supreme Court according to criminal procedure;

(3) If the accused is charged with common crimes, the Senate shall determine whether there are grounds for proceeding against him, and in the event of an affirmative decision, it shall remand him to the Supreme Court for trial;

(4) The Senate may refer the preparation of the trial to a committee of its own members, reserving to itself the duty of trial and of pronouncing sentence, which shall be done in open session by a vote of at least two thirds of the Senators participating in the trial.

Article 98: The Senate shall also have the following powers:

(1) To accept or reject the resignations of the President of the Republic and of the Presidential Alternate (*Designado*);

(2) To confirm or reject military appointments made by the Government from the rank of Lieutenant-Colonel to that of the highest rank in the Army and Navy;

⁴ This provision, which is Article 96 of the Constitution of 1886, has never been altered to make it consistent with the new text of Article 102 of the Codification of 1945. The officers referred to are actually listed in subsection 5 of Article 102 rather than in subsection 4.

(3) To grant the President of the Republic permission to absent himself temporarily from office for cause other than illness;

(4) To permit the passage of foreign troops through the territory of the Republic;

(5) To appoint the survey commissions referred to in Article 5;

(6) To authorize the Government to declare war against another nation.

TITLE IX

HOUSE OF REPRESENTATIVES

Article 99: The House of Representatives shall be composed of members chosen on the basis of the population of the Republic at the ratio of one Representative for each 90,000 inhabitants and an additional Representative for each fraction amounting to not less than 45,000 inhabitants. Each time a new general census of the Republic indicates an increase in population of at least 500,000 persons, the number represented by each Representative shall automatically be increased by 20,000 persons.

In no case shall any Department elect less than three Representatives, or less than the number to which it is now entitled.

In cases of temporary or permanent vacancy the places of Representatives shall be filled by Alternates (*Suplentes*) in accordance with the order in which they appear on the election lists. The number of Alternates shall be equal to the number of Representatives.

Article 100: To be elected Representative one must be a citizen in the full exercise of the rights thereof who has not been condemned for an offense meriting corporal punishment and who is more than twenty-five years of age.

Article 101: Representatives shall be elected for a term of two years and shall be eligible indefinitely for re-election.

Article 102: The House of Representatives shall have the following powers:

(1) To select the Attorney-General of the Nation from a ternary presented by the President of the Republic;

(2) To select the Comptroller-General of the Republic;

(3) To examine and pass upon the general accounts of the Treasury as presented by the Comptroller;

(4) To initiate all laws for the levying of taxes and for the organization of the Public Ministry;

(5) To impeach before the Senate, when occasion shall require

it, the President of the Republic, Ministers of State, the Attorney-General of the Nation, and the Justices of the Supreme Court;

(6) To examine charges and complaints presented to it by the Attorney-General or by private persons against the above-mentioned officials, and, if found in order, to prepare the Articles of Impeachment for consideration by the Senate.

TITLE X

PROVISIONS COMMON TO BOTH HOUSES AND TO THE MEMBERS THEREOF

Article 103: Each of the two Houses shall have the following powers:

(1) To provide for such offices as may be created by law for the discharge of its business;

(2) When necessary, to organize a police force for the building in which it holds its sessions;

(3) To determine whether the credentials which each member presents on taking his seat are in accordance with law;

(4) To answer or decline to answer the messages of the Government;

(5) To call upon the Government for written or verbal reports necessary for the better performance of the work of the respective House, or to inform itself of the acts of the Administration except such as are reserved from such inquiry by Article 78, subsection 4.

The summons issued to Ministers of State to attend the sessions of the Houses to give verbal reports must state concretely the nature of the report desired, and discussion may not be extended to matters alien thereto.

Article 104: The sessions of the two Houses shall be public within the limitations prescribed by their rules and regulations. There shall be public sessions at least three times a week. Committee meetings shall also be public within the limitations prescribed by the regulations of the Houses.

Article 105: The members of the two Houses represent the entire Nation and should vote in the sole interest of justice and the public good.

Article 106: Senators and Representatives may not be held responsible for votes and opinions expressed in the performance of their duties. For any expression in debate they shall be responsible only

to the House to which they belong; they may be called to order by the presiding officer and punished according to the regulations for any offense committed.

Article 107: During the session, forty days before and twenty days after the same, no member of Congress may be arrested or called in a criminal trial without permission of the House to which he belongs. If taken *in flagrante delicto*, he may be arrested, and he shall be placed immediately at the disposal of his House.

Article 108: The President of the Republic, Ministers of State, Justices of the Supreme Court of Justice, Councilors of State, the Comptroller-General of the Republic, the Attorney-General of the Nation, Chiefs of administrative departments, Governors, and Secretaries of Interior (*Secretarios de Gobernación*) may not be elected to Congress until six months after they have ceased functioning in their former offices. Nor may anyone be Senator, Representative, or Deputy who, within three months before the election, shall have exercised civil, political, or military jurisdiction or authority anywhere in the Republic.

Within the same constitutional term no one may be elected Senator and Representative, nor may he be elected to the same office by more than one election district. Any violation of this provision renders both elections null and void and creates a vacancy in the House to which he was elected in the first place.

Article 109: The President of the Republic may not confer any offices upon Senators or Representatives during their term of office, except the offices of Minister of State, Governor, Diplomatic Agent, and Military Chief in time of war.

The violation of this provision nullifies the appointment.

The acceptance of such appointments as are excepted above by members of Congress shall cause their congressional seats to be vacant for the time during which they shall be engaged in the office.

Article 110: Senators and Representatives shall not, either directly or through third persons, enter into any contract with the Administration, nor shall they accept a power of attorney for the negotiation of business with the Government of Colombia.

Article 111: No citizen may be elected to Congress who, at the time of election or during the six months preceding the same, has been party to any business with the Government either in his own interest or in the interest of third parties other than connection with official entities or institutions.

The law shall determine the kind of business to which this provision is applicable as well as the special proofs to demonstrate the same.

Article 112: No increase in salary or viaticum decreed by Congress shall enter into effect until after the members who have voted the same shall have served out their terms.

Article 113: The remuneration for members of Congress shall be fixed and regulated by law.

TITLE XI

THE PRESIDENT OF THE REPUBLIC AND THE PRESIDENTIAL ALTERNATE

Article 114: The President of the Republic shall be elected in one day and for a term of four years by a direct vote of the citizens in the manner determined by law.

Article 115: The President of the Republic shall have the same qualifications as are required for Senators.

Article 116: The President-elect of the Republic shall take office before the President of Congress, and he shall take the following oath: "I swear before God to comply faithfully with the Constitution and laws of Colombia."

Article 117: If for any reason the President should not be able to take office in the presence of the President of Congress, he shall do so before the President of the Supreme Court and, failing this, before two witnesses.

Article 118: The President of the Republic shall exercise the following powers with relation to the Congress:

- (1) To open and close the ordinary sessions of Congress;
- (2) To convene Congress in extraordinary session;
- (3) To present to Congress at the beginning of each session a message relating the acts and measures taken by the Administration;
- (4) To remit at the same time to the House of Representatives the budget of revenues and expenses;
- (5) To furnish the two Houses such information as they may request which does not require secrecy;
- (6) To furnish efficient and effective aid to the two Houses when they request it, placing at their disposal if necessary the entire public force;
- (7) To co-operate in the enactment of legislation by presenting bills through the Ministers of State, and by exercising the power of veto and approval under the Constitution;
- (8) To issue decrees having the force of legislative enactments in such cases and with such formalities as are prescribed in Article 121,

and continuing in force only until public peace and order are re-established.

Article 119: The President of the Republic shall exercise the following powers with relation to the administration of justice:

(1) To submit to the House of Representatives a ternary for the selection of the Attorney-General of the Nation, and to appoint prosecuting attorneys from lists submitted by the Attorney-General of the Nation;

(2) To see that prompt and equal justice is administered throughout the Republic, giving judicial officers all aid necessary for the execution of their decisions which are made in accordance with law;

(3) Acting through the proper official of the Public Ministry or a prosecuting attorney appointed for that purpose, to institute proceedings before the competent tribunal against Governors of Departments and any other national or local administrative or judicial officers for infractions of the Constitution or laws, or for other crimes committed in the performance of their duties;

(4) To grant pardons for political offenses in accordance with the law which regulates the exercise of this power. In no case shall these pardons relieve the recipients of responsibilities due private persons under the laws.

Article 120: The President of the Republic shall exercise the following powers as supreme administrative authority:

(1) To appoint and remove at pleasure Ministers of State and Chiefs of administrative departments;

(2) To promulgate laws, obey them, and see that they are faithfully executed;

(3) To issue ordinances, decrees, and resolutions necessary for the execution of the laws;

(4) To appoint and remove Governors at pleasure;

(5) To appoint all persons in the national service whose appointment is not entrusted to other authorities or corporations in accordance with this Constitution and laws hereafter enacted.

In all cases the President shall have the power to appoint and remove his agents at pleasure;

(6) To distribute the public armed forces and to make military appointments subject to the restrictions imposed in Article 98, subsection 2, and in accordance with the formalities prescribed by law for the exercise of this power;

(7) To maintain public order throughout the territory and to re-establish the same when it has been disturbed;

(8) Whenever he deems it proper, to direct military operations as chief of the armies of the Republic. Should he exercise military command beyond the limits of the capital, the Presidential Alternate (*Designado*) shall assume charge of the other branches of administration;

(9) To provide for the external security of the Republic defending the independence and honor of the Nation and the inviolability of its territory; to declare war with the consent of the Senate or to make war without such consent when it becomes necessary to repel a foreign invasion; and to conclude and ratify the treaty of peace, reporting his actions with pertinent documents to the next session of Congress;

(10) When the Senate is in recess, to permit the passage of foreign troops through the territory of the Republic after prior consultation with the Council of State;

(11) To permit the harboring of foreign warships within the waters of the Nation after prior consultation with the Council of State;

(12) To supervise the collection and administration of the revenues and public moneys and to decree their disbursement according to law;

(13) To regulate, direct, and inspect national public education;

(14) To enter into administrative contracts for the engagement of services or for the performance of public works in accordance with the fiscal laws, and to render account thereof to Congress at its ordinary sessions;

(15) To exercise the necessary supervision over banks of issue and other establishments of credit and over mercantile corporations in accordance with law;

(16) To permit the acceptance of honors and gifts from foreign governments by national officials who may request such permission;

(17) To issue letters of naturalization in accordance with law;

(18) To grant patents for prescribed periods in accordance with law to creators of useful inventions and improvements;

(19) To exercise the right of inspection and supervision over institutions of common utility in order that their revenues may be protected and properly applied and that the will of the founders may be in all respects executed;

(20) As supreme administrative authority, the President of the Republic shall direct the diplomatic and commercial relations with foreign powers, appoint Diplomatic Agents, receive foreign diplomatic representatives, and enter into treaties and conventions which shall be submitted to Congress for approval.

Article 121: In cases of foreign war or domestic disturbance the President with the consent of the Council of State may declare the public order disturbed and place all or part of the Republic in a state of siege. During such time the Government shall have in addition to its other legal powers those granted by the accepted rules of the law of nations which have for their purpose the regulation of international war.

Decrees issued by the President within the above limitations shall have the force of law provided they carry the signatures of all the Councilors of State.

The Government, however, may not repeal laws by means of such decrees. Its powers are limited to the suspension of such laws as are incompatible with the state of siege.

The Government shall declare the public order re-established as soon as the foreign war is terminated or the revolt suppressed; the extraordinary decrees which have been issued shall cease to be in force.

The President and Councilors of State shall be held responsible for any declaration of the disturbance of the public order when there is not in fact a foreign war or internal disturbance; any abuse of powers granted by this article by any other functionaries shall likewise cause them to be held responsible.

When the public order is re-established the Government shall call Congress into session and present a report of its actions.

In case of foreign war the Government shall call Congress into session in the same decree in which the public order is declared disturbed and the Republic is placed in a state of siege so that that body may meet within sixty days thereafter; and if Congress is not so called, it may meet on its own initiative.

Article 122: In the cases referred to in Article 28 of the Constitution and Article 33 of Legislative Act No. 3 of 1910,⁵ the Government shall consult with the Council of State before taking any action.

Article 123: The Senate may grant the President temporary leave from office.

For reasons of illness, the President may for whatever time may be necessary vacate office by giving prior notification to the Senate, or if that body is in recess, to the Supreme Court.

Article 124: Every two years Congress shall elect a Presidential Alternate (*Designado*), who shall exercise the executive function in the absence of the President.

The term of office for Presidential Alternate shall begin on August 7 of the proper year.

⁵ This provision is incorporated as Art. 121 of this Codification.

Article 125: When for any reason Congress has not chosen Presidential Alternates, those formerly selected shall continue in office.⁶ In the event that there are no duly elected Presidential Alternates, the exercise of the Executive Power shall be entrusted to the Ministers of State in the order determined by law; and in case none of them is qualified to serve, the office shall be entrusted to the Governors in the order determined by the proximity of their official residences to the capital of the Republic.

In the following instances the office of President is considered vacant:

In case of death, accepted resignation, removal by impeachment, permanent physical disability, or abandonment of office, the last two being declared by the Senate.

Article 126: The person in charge of the Executive Power shall enjoy the same privileges and exercise the same powers accorded the President whose office he fills.

Article 127: In case of permanent vacancy in the presidency, he who is exercising the office shall decree the holding of an election in the third month thereafter. The person then chosen shall continue in office for the remainder of the term.

He who occupies the presidency shall continue in that function without the necessity of decreeing a new election if only two years or less remain in the term.

Article 128: The President of the Republic, or he who is functioning in his stead, may not leave the national territory while in office and for one year thereafter without the permission of the Senate. Violation of this provision implies abandonment of office.

Article 129: In no case is the President of the Republic eligible for re-election for the term immediately following.

Nor may the person who has for any reason whatsoever exercised the Executive Power within the year immediately preceding the election be elected President of the Republic or Presidential Alternate (*Designado*).

No citizen may be elected President of the Republic who has, during the six months preceding election, held the office of Minister of State, Justice of the Supreme Court of Justice, Councilor of State, Attorney-General of the Nation, or Comptroller-General of the Republic.

Article 130: The President of the Republic, or whoever is acting

⁶ This provision has been modified by the preceding article, which provides for only one Presidential Alternate instead of two, as was formerly the case.

in his stead, shall be responsible for acts and omissions which violate the Constitution or laws.

Article 131: The President of the Republic while in office, and he who is functioning in the President's stead for the time he so functions, may not be prosecuted or judged for crimes except upon accusation by the House of Representatives and after the Senate shall have declared that there are grounds for such accusation.

TITLE XII

MINISTERS OF STATE

Article 132: The number, designation, and precedence of the several Ministers of State shall be determined by law.

The President of the Republic shall distribute the public business among them according to their several jurisdictions.

Administrative departments with responsible chiefs shall be created and organized by law, which shall also set forth their functions in accordance with the needs of the public service.

Article 133: A Minister of State shall have the same qualifications as a Representative.

Article 134: The Ministers are the Government's organs of communication with Congress; they present bills to the Houses, take part in the debates, and advise the President as to approval or disapproval of legislation.

Ministers and Chiefs of administrative departments shall present to Congress within the first fifteen days of each session a report on the condition of affairs in their particular ministry or department and shall recommend such reforms as experience may suggest.

The Houses may require the attendance of Ministers, and the standing committees of the Houses may require the attendance of Chiefs of administrative departments.

Article 135: Ministers and Chiefs of administrative departments as superior heads of administration, and Governors as agents of the Government may exercise under their own responsibility whatever functions may be given them by the President of the Republic as supreme administrative authority. Those functions which may be so delegated shall be defined by law.

Such delegation exempts the President from responsibility provided the person to whom it is made is given exclusive control, but his acts or resolutions may always be amended or revoked by the President, who, by so doing, reassumes responsibility.

TITLE XIII

THE COUNCIL OF STATE

Article 136: There shall be a Council of State the membership of which shall be determined by law.

Councilors of State shall be selected by the legislative Houses from ternaries submitted by the President of the Republic. In each ternary shall be included the name of a Councilor already in office.

Councilors of State shall have a term of four years, one half being chosen every two years. Each member of the Council shall have an Alternate (*Suplente*) chosen by the Houses in the same manner. Alternates shall replace principals in cases of permanent or temporary vacancy.

The Government shall appoint provisional Councilors.

Ministers of State may participate in the deliberations of the Council, but they shall have no vote.

Article 137: The Council shall be divided into sections in order to separate its functions as the Supreme Administrative Tribunal (*Tribunal Supremo de lo Contencioso-administrativo*) from the other functions assigned by the Constitution and laws.

The functions of each of the sections as well as their organization and membership shall be determined by law.

The Government shall designate which Councilors shall serve in each section.

Article 138: The President of the Council shall be chosen by that body and shall continue in office for one year, being eligible indefinitely for re-election.

Article 139: To be elected Councilor of State and to be eligible to enter upon the discharge of the duties thereof, it is necessary that one possess the same qualifications required to be a member of the Supreme Court of Justice.

Article 140: The office of Councilor is incompatible with any other effective public employment and with the exercise of the profession of attorney-at-law.

Article 141: The Council of State shall have the following powers:

(1) To act as the supreme consultative body for the Government in matters of administration; hence it shall be heard in all matters determined by the Constitution and laws.

The opinions of the Council are not binding upon the Government except in the case provided in Article 212 of this Constitution;

(2) To prepare bills and codes for the consideration of the two

Houses, and to propose such reforms in all legislative matters as are deemed proper;

(3) To exercise, in accordance with rules established by law, the functions of Supreme Administrative Tribunal;

(4) To establish its own rules and regulations and to exercise any other functions required by law.

TITLE XIV

THE PUBLIC MINISTRY (MINISTERIO PÚBLICO)

Article 142: The Public Ministry shall be exercised under the supreme direction of the Government acting through an Attorney-General of the Nation and the prosecuting attorneys of the Superior District Tribunals and other officers designated by law.

The House of Representatives may exercise the functions of a prosecuting attorney in certain cases.

Officers of the Public Ministry shall have the same character, remuneration, privileges, and obligations as the Justices and Judges before whom they litigate.

Article 143: The officers of the Public Ministry shall defend the interests of the Nation; promote the execution of the laws, judicial sentences, and administrative orders; supervise the official conduct of public officers; and prosecute those guilty of crimes and misdemeanors that disturb the social order.

Article 144: The Attorney-General of the Nation shall be elected for a term of four years by the House of Representatives from a ternary presented by the President of the Republic, and he shall have the same qualifications required of a Justice of the Supreme Court of Justice.

The prosecuting attorneys of the Superior Tribunals shall be chosen for a term of four years by the President of the Republic from lists presented by the Attorney-General of the Nation, and they shall have the same qualifications required of Judges of the Superior Tribunals.

The prosecuting attorneys of the Superior and Circuit Courts shall be selected for a term of three years by the Attorney-General of the Nation from lists presented by the prosecuting attorneys of the respective Superior Tribunals, and they shall have the same qualifications required of Superior or Circuit Court Judges.

The lists referred to in this article shall consist of the names of those already in office, and the names of as many more persons as may be necessary to provide three candidates for each position.

These lists shall consist of candidates who, in addition to meeting the qualifications set forth in the Constitution, shall have held one of the offices mentioned in Articles 155 and 157 in one of the Departments, or shall be natives thereof (*o que sean oriundos de él*).

Article 145: The Attorney-General of the Nation shall have the following special functions:

(1) To see that all public officers in the service of the Nation properly discharge their duties;

(2) To arraign before the Supreme Court all officers who are to be tried by that court;

(3) To see that all other officers of the Public Ministry faithfully discharge their duties and to enforce their responsibility for misconduct;

(4) To appoint and remove at pleasure his immediate subordinates; And all other functions which may be assigned by law.

Article 146: The prosecuting attorney of the Council of State shall be chosen in the manner provided in Article 144, subsection 2. The qualifications shall be the same as those required of Councilors of State, and the term of office shall be four years.

In the Administrative Tribunals the office of prosecuting attorney shall be discharged in accordance with the rules and procedures prescribed by law.

TITLE XV

ADMINISTRATION OF JUSTICE

Article 147: The Supreme Court of Justice shall be composed of whatever number of Justices may be determined by law. The same law shall divide the court into sections, indicating those matters of which each section shall take cognizance separately and those in which the court shall function *en banc*.

Article 148: The term of office for Justices of the Supreme Court of Justice shall be five years, and they may be re-elected indefinitely. The President of the court shall be chosen annually by the court.

Article 149: Justices of the Supreme Court of Justice shall be chosen by the legislative Houses from ternaries presented by the President of the Republic. The Senate and House shall each select one half of the Justices, but if the law should provide for an odd number, the House shall select one more.

Alternates (*Suplentes*) shall be personal and chosen in the same manner as principals.

The Government shall select provisional Justices of the Supreme

Court, and Governors shall select those of their respective Superior Tribunals when vacancies cannot be filled by Alternates.

In cases of permanent vacancy caused by death, accepted resignation, constitutional incompatibility of offices, or impeachment, a new selection shall be made.

Article 150: Justices of the Supreme Court of Justice shall be Colombians by birth, in the full exercise of the rights of citizenship, thirty-five years of age, and registered attorneys; in addition, they must have held one of the following offices: Justice of the Supreme Court of Justice or Judge of one of the Superior District Tribunals for at least four years, Prosecuting Attorney of a Superior Tribunal for the same period of time, Attorney-General of the Nation for three years, practicing attorney for four years, or Councilor of State for the same period.

Article 151: The Supreme Court of Justice shall exercise the following special functions:

(1) To try the high national officers who have been accused before the Senate for offenses made actionable before the court by Article 97;

(2) To take cognizance of all cases which for questions of responsibility, violation of the Constitution or laws, or malfeasance in office may be instituted against Chiefs of administrative departments, the Comptroller-General of the Republic, diplomatic and consular agents, Governors, Judges of District Tribunals, Commanding Generals, and heads of the principal treasury offices;

(3) To take cognizance of all cases affecting Diplomatic Agents accredited to the Government of the Nation as provided for in international law;

(4) And all other functions that may be assigned by law.

Article 152: The national territory shall be divided into judicial districts in each of which there shall be a Superior Tribunal, the composition and functions of which shall be determined by law.

Article 153: In no case may courts other than those provided in the Constitution be created by law.

Article 154: In each Department there shall be an Administrative Tribunal the functions of which shall be determined by law.

The number of Judges thereof, their qualifications, and manner of selection and removal shall be established by law.

The term of office for these Judges shall be two years.

Article 155: In order to be a Judge of the Superior Tribunals, one must be a Colombian by birth, in the full exercise of the rights of citi-

zenship, a registered attorney, thirty years of age, and, moreover, shall have held for at least four years one of the following offices: Judge of a District Tribunal, Superior or Circuit Judge, Special Judge of equal or superior category, Prosecuting Attorney of a Superior Tribunal, or Judge of an Administrative Tribunal.

Article 156: Judges of the Superior District Tribunals shall be selected by the Supreme Court of Justice from among those citizens who meet the qualifications of the preceding article and who have held one of the offices therein enumerated in the particular Department, or who may be natives thereof.

Article 157: In order to be a Judge of a Superior Court, Circuit Court, Juvenile Court, special court, Criminal Court of first instance, or of any other court of equal or superior category, one must be a Colombian by birth, in the full exercise of the rights of citizenship, a registered attorney, and must have held for at least one year the office of Circuit Judge or Municipal Judge. Judges referred to in this article shall be selected in plenary session for a term of two years by the Superior Tribunal of the particular judicial district.

Article 158: In order to be a Municipal Judge one must be a Colombian by birth, in the full exercise of the rights of citizenship, and a registered attorney.

Judges referred to in this article shall be selected by the Superior Tribunal of the particular judicial district for a term of two years.

Their competency and the territory under their jurisdiction shall be defined by law, several towns being grouped together when deemed necessary.

Article 159: Proof of the possession of the qualifications required of officers of the judiciary, of the Public Ministry, and of the administrative jurisdiction shall be established in the manner determined by law.

Possession of the qualifications necessary for any one of these offices shall qualify one to hold offices of inferior category.

Article 160: Justices and Judges shall not be suspended from office except in the cases and in accordance with the formalities prescribed by law, nor shall they be removed for penal offenses except by virtue of a judicial decree handed down by the proper superior.

Justices and Judges may be subjected to disciplinary measures imposed by the proper superior, which measures may consist of fines, suspension, or removal in the manner determined by law.

Justices and Judges may not be transferred to posts in the other branches of government without vacating their judicial office.

Salaries of Justices and Judges may not be abolished or diminished

in such manner as to prejudice those in office when such action is taken. Judicial offices shall not be cumulative, and they are incompatible with the exercise of any other office of profit and with any participation in the practice of law. The only exception to this provision is participation in the teaching profession.

Article 161: Subordinate personnel of the judiciary and Public Ministry and of the administrative jurisdiction shall be selected in the manner determined by law.

Article 162: The nature of judicial office and conduct, methods of selecting candidates for judicial functions and those of the Public Ministry, pensions which may be decreed for those who have served for a prescribed period or who may be retired for other reasons may all be established and regulated by law. All officials who, for reasons of health, are unable adequately to perform their duties and all officials who have reached the maximum age limit legally set for their particular offices shall be retired on such pensions as may be established by law.

Article 163: Every sentence shall be accompanied by an opinion.

Article 164: A labor jurisdiction shall be established and organized by law, and Commerce Courts may be established.

Juries for the trial of criminal cases may be instituted by law.

TITLE XVI

PUBLIC ARMED FORCES

Article 165: All Colombians shall be required to bear arms when public necessity requires that they should do so in defense of the national independence and institutions of the country.

All exemptions from military service shall be determined by law.

Article 166: The Nation shall maintain a standing army for its defense. The law shall determine the system of replacements in the Army as well as all matters relating to the promotion, rights, and duties of soldiers.

Article 167: A national militia and a national police corps shall be established and organized by law.

Article 168: The armed forces are not a deliberative body.

They may not assemble except by order of legitimate authority, or address petitions except in the interest of better service and morale, and this in accordance with the laws governing the same.

Members of the Army, National Police, and other armed bodies of a permanent character may not vote or participate in political debates while on active duty.

Article 169: Soldiers shall not be deprived of their rank, honors, and pensions except in the cases and manner provided by law.

Article 170: Courts-Martial or Military Tribunals shall take cognizance, under provisions of the Military Penal Code, of all offenses committed by persons in active service and in regard to said service.

TITLE XVII

ELECTIONS

Article 171: All citizens shall elect directly Municipal Councilors, Deputies to the Department Assemblies, Representatives, Senators, and the President of the Republic.

Article 172: When more than two individuals are to be elected either by popular election or by some public body, it shall be done by the electoral quotient system or by some other system which assures the proportional representation of the parties. The manner in which this is to be effectuated shall be determined by law.

Article 173: In view of the requirements of Article 172 of the Constitution, the Supreme Court in selecting Judges of the Superior Tribunals, the President in selecting the Prosecuting Attorneys of these courts, the Attorney-General in selecting the Prosecuting Attorneys of the inferior courts shall do so in accordance with the relative strength of the parties represented in the particular Department Assembly. The manner of making the selection shall be regulated by law.

Article 174: In all elections or appointments made by judiciary officials or officials of the Public Ministry no person may be selected who is a relative to the fourth degree of consanguinity or to the second degree of affinity to any of the officials participating in the election or to anyone who participated in the selection of the above-mentioned officials.

Article 175: For election of Deputies to the Assemblies, each Department shall constitute a single election district.

Article 176: Each Department shall constitute an election district for the election of Senators.

Article 177: Each Department shall constitute an election district for the election of Representatives.

Article 178: Officials and subordinates of both the judiciary and the Public Ministry may not be active members of any political party, nor may they participate in campaigns or elections except to the extent of exercising their right of suffrage. Any violation of this provision shall be considered malfeasance in office and sufficient cause for removal.

Article 179: Suffrage shall be exercised as a constitutional function. The person who votes and elects does not thereby impose any obligation on the candidate, nor does he confer any mandate upon the officer-elect.

Article 180: Whatever else may be necessary in connection with the elections and their canvassing shall be provided by law, taking care that these two functions shall be separate; it shall also define the crimes which menace the correctness and freedom of voting and shall establish a proper penal sanction.

TITLE XVIII

DEPARTMENT AND MUNICIPAL ADMINISTRATION

Article 181: In each of the Departments there shall be a Governor who shall be at the same time an agent of the Government and chief of local administration.

Article 182: In the administration of local matters the Departments shall be independent, subject to the limitations established by the Constitution.

Article 183: The property and revenues of the Departments as well as those of the Municipalities are their exclusive property respectively, and they shall enjoy the same guarantees of property and revenue as are extended individuals. Such property may not be taken except in the manner prescribed for the taking of private property. The national government may not grant departmental or municipal franchises.

Article 184: The property, rights, revenues, or actions which by law or decree of the national government or by any other title belong to the former sovereign States shall continue as the property of the respective Departments. The real property specified in Article 202 of this Constitution may be excepted from this provision.

Article 185: There shall be in each Department an administrative corporation known as the Department Assembly which shall meet annually in ordinary session of two months' duration in the capital of the Department.

The Governor may call the Assembly into extraordinary session. The dates of the ordinary sessions shall be fixed by law.

Article 186: Department Assemblies shall be composed of Deputies chosen by popular election on the basis of population at the ratio of one Deputy for each forty thousand inhabitants and an additional Deputy for any fraction equal to or greater than one half this number. In no case shall any Department elect fewer Deputies than it now elects. The

number of Alternates (*Suplentes*) shall be the same as the number of Deputies, and the former shall replace the latter in cases of temporary or permanent vacancy according to the order in which they appear on the election lists.

To be elected Deputy, one must have the same qualifications required for election as Representative.

Article 187: The Assemblies shall have the following functions:

(1) To regulate by means of ordinances and in accordance with constitutional requirements primary and secondary schools and charitable institutions;

(2) To regulate and promote established industries and the introduction of new ones, importation of foreign capital, settlement of the public lands of the Department, opening of roads and navigable canals, construction of railroads, exploitation of the timber lands of the Department, canalization of rivers, matters relative to local policing, supervision of district revenues and expenses as well as those relative to internal improvements—all this being done by means of ordinances and with the funds of the Department;

(3) To organize the Department Comptroller's office and elect the Comptroller for a term of two years;

(4) To create and abolish Municipalities, alter Municipal boundaries, and fix the limits of Municipal Districts, all strictly in accordance with the requirements set up by law;

(5) To set the number of Department employees as well as their functions and salaries;

(6) To perform all the other functions assigned by the Constitution and laws.

Article 188: The creation and abolition of Notary and Registry Offices as well as the organization and regulation of the public services rendered by Notaries and Registrars may be done by law.

Article 189: The Assemblies shall annually vote the budget of revenues and expenses of their respective Departments in accordance with the norms established by law.

Article 190: Department appropriations for the salaries of Deputies and for the expenses of the Assemblies and the Department Comptroller's office may be limited by law.

Article 191: The Department Assemblies may levy taxes under the conditions and within the limits established by law to cover the expenses of departmental administration.

Article 192: Ordinances of the Assemblies and of the Municipal

Councils are binding so long as they are not annulled or suspended by the Administrative Tribunals.

Article 193: The Administrative Tribunals may provisionally suspend acts of the Administration for the reasons established by law.

Article 194: The Governor shall be invested with the following powers:

(1) To execute and cause to be executed in the Departments the orders of the Government;

(2) To direct administrative action in the Department, to appoint and remove his agents, to amend and revoke their acts, and to take all measures necessary for the conduct of the several branches of administration;

(3) To be spokesman for the Department and represent it in administrative and judicial matters, being able to delegate the latter function in accordance with law;

(4) To aid in the administration of justice as determined by law;

(5) To supervise and protect official bodies and public establishments;

(6) To veto Assembly bills for unconstitutionality, illegality, or inexpediency, and to sanction and promulgate ordinances in legal form;

(7) To review the acts of Municipal Councils and Mayors (*Alcaldes*) for reasons of unconstitutionality or illegality, revoking the former and remanding the latter to the judicial authorities for their decision;

(8) To perform such other functions as may be conferred by law.

Article 195: The Governor may call the national forces to his aid, and the military commander shall obey his orders except where contrary dispositions have been made by the Government.

Article 196: In each Municipal District there shall be a popularly elected body known as the Municipal Council.

Article 197: The functions of the Municipal Councils, which they shall exercise in accordance with law, shall be as follows:

(1) To enact such ordinances (*acuerdos*) as may be necessary for the administration of the district;

(2) To levy taxes and determine local expenditures in conformity with the Constitution, laws, and ordinances of Department Assemblies;

(3) To select Municipal Attorneys, Treasurers, and other official personnel as provided by law;

(4) To perform such other functions as may be assigned by law.

Article 198: Various classifications of municipalities may be estab-

lished according to population, financial resources, and economic importance; and distinct regimes may be provided for their administration.

Article 199: The city of Bogotá, capital of the Republic, shall be organized as a special district not subject to the requirements of the ordinary municipal regime. Other municipalities may be incorporated into the territory of the capital of the Republic provided such annexation is requested by three fourths of the Councilors of the particular municipality.

Article 200: With regard to departmental revenues originating in Bogotá, the extent to which the capital of the Republic shall participate therein shall be determined by law.

Article 201: In every Municipality there shall be a Mayor (*Alcalde*) who shall function as agent of the Governor as well as chief of the municipal administration as required by law.

TITLE XIX

FINANCE (DE LA HACIENDA)

Article 202: The following property belongs to the Republic of Colombia:

(1) The possessions, revenues, real property, securities, taxes, and shares which belonged to the Colombian Union on April 15, 1886;

(2) The uncultivated domain, mines, and salts works which belonged to the States the property in which now vests in the Nation, without prejudice to the rights granted to third parties by the said States or granted to the States by the Nation under rights of indemnification;

(3) The mines of gold, silver, platinum, and precious stones which lie within the national territory, without prejudice to the rights acquired under previous laws by discoverers and exploiters of any of them.

Article 203: The Republic shall be responsible for the foreign and domestic debts that have been recognized or which may hereafter be recognized and for the expenses of the national public service.

The order and manner of satisfying these obligations shall be determined by law.

Article 204: No indirect tax nor any increase in this type of tax shall take effect until six months after the promulgation of the law establishing the same.

Article 205: Any modification of the import duties which has for its object the reduction of such duties shall enter into force ninety days after the law has been sanctioned, and the reduction shall take place by tenths during the following ten months.

If the modification has for its object an increase of duties, the increase shall take place by thirds during the three months following the sanctioning of the law.

This provision and that of Article 204 of the Constitution shall not limit the extraordinary powers of the Government when it is invested with them.

Article 206: In time of peace taxes not found in the budget of revenues shall not be levied, nor may appropriations not included in the budget of expenses be made.

Article 207: No expenditure of public money shall be made without authorization by Congress, Department Assemblies, or Municipalities; nor shall any appropriation be diverted from the object for which it was made.

Article 208: The Executive shall draw up annually a budget of revenues together with an appropriation bill, and these shall be presented to Congress during the first ten days of the ordinary session in July.

Article 209: When Congress does not vote the budget for the fiscal year, that of the preceding year shall continue in force, but the Government may reduce expenditures and consequently alter or abolish offices when the estimates of revenue for the new fiscal year indicate the desirability of such action.

Article 210: Congress shall establish the national revenues and fix the expenses of administration. Each session shall pass a general budget of revenues and appropriations in strict conformity with the law regulating this matter. In the budget no item may be appropriated which has not been proposed by the proper standing committee and which is not based upon a prior law or upon a credit judicially recognized.

Article 211: Neither Congress nor the Government may propose any increase or inclusion of a new item of expenditure in the budget bill if such brings revenues and expenditures into disequilibrium. Congress may eliminate or reduce any item of expenditure proposed by the Government except those necessary for servicing the public debt, for the other contractual obligations of the State, or for the ordinary administrative services. If in the debate upon the appropriation bill any items are eliminated or reduced, they may be replaced by others if authorized by prior legislation and provided further that the amount does not exceed that which was eliminated or reduced.

Article 212: When in the judgment of the Government it becomes necessary to make an unforeseen expenditure and the Houses are in re-

cess and have not voted the appropriation or have voted an insufficient amount, a supplemental or extraordinary credit may be made.

These credits may be authorized by the Council of Ministers upon proof of their necessity and with approval of the Council of State.

Congress shall have power to legalize such credits.

The Government may petition Congress for credits in addition to those provided in the budget of expenses.

Article 213: The Executive may not make supplemental or extraordinary credits referred to in Article 212 of the Constitution, or make diversion of funds within the budget except under the conditions and according to the procedures provided by law.

TITLE XX

CONCERNING THE CONSTITUTIONAL JURISDICTION

Article 214: To the Supreme Court is entrusted the guardianship of the integrity of the Constitution. Consequently in addition to other powers conferred upon it by the Constitution and laws, it shall also have the following:

To render final decision in cases where legislative acts have been vetoed by the Government as being unconstitutional, or when the question of constitutionality of any law or decree issued by the Government in the exercise of the powers mentioned in subsections 11 and 12 of Article 76 and in Article 121 of the national Constitution has been brought before the court by any citizen.

In all actions concerning the question of unconstitutionality, the Attorney-General of the Nation shall be given opportunity to intervene.

Article 215: In all cases of conflict between the Constitution and a law, preference shall be given to the constitutional provision.

Article 216: The Administrative Tribunals shall have cognizance of the question of the unconstitutionality of those decrees of the Government which are not based upon the powers granted in subsections 11 and 12 of Article 76 and Article 121 of this Constitution.

Article 217: A Tribunal of Conflicts, charged with the function of settling conflicts of jurisdiction which may arise between the ordinary and the administrative courts, shall be established and organized by law.

TITLE XXI

AMENDING THE CONSTITUTION

Article 218: The Constitution may be amended only by a legislative act first debated and approved in ordinary session, published by the

Government, and reconsidered in the following ordinary session, where it shall again be debated and approved by an absolute majority of the complete membership of each House. If the Government fail to publish the proposed amendment in due time, it shall be published by the President of the Congress.

TITLE XXII

TRANSITORY PROVISIONS

*Legislative Act No. 3 of 1910*⁷

Article a: The terms of office of the officials and bodies referred to in the Constitution and in this amendment shall begin on the following dates:

That of the National Congress, July 20, 1911;

That of the President of the Republic, August 7, 1914;

That of the Supreme Court of Justice, May 1, 1915;

That of the Superior Tribunals, May 1, 1911.

Legislative Act No. 1 of 1945

Article a: Until Congress shall enact the basic law of the Council of State and of the Administrative Tribunals, these bodies shall continue to function in their present manner. In electing new Councilors of State the law may fix terms of office shorter than those provided in order to effect the staggering of terms required by this amendment.

Article b: In the first two elections of Councilors of State, citizens who possess the qualifications set forth in Article 150 and who are registered attorneys having had at least ten years' practice may be selected.

In the first election of Judges of Superior Tribunals and inferior judges, citizens who possess the qualifications set forth in Articles 155 and 157 and who have had at least five years' experience in the practice of law may be selected.

Article c: The Second Presidential Alternate (*Segundo Designado*) shall continue in office until August 7, 1946.⁸

Article d: The term of office for Presidential Alternate shall begin on August 7, 1946.

Article e: With the advice of the Council of State, the Government shall codify all constitutional provisions remaining in force. The articles

⁷ This was included among the "transitory provisions" in order to avoid any interruption in the continuity of terms for the offices mentioned.

⁸ Formerly there were two Presidential Alternates. The amendment of 1945 abolished the office of Second Presidential Alternate.

shall be arranged in a continuous enumeration and the provisions grouped together in separate titles.

Article f: The last subsection of Article 108, dealing with Alternates (*Suplentes*) for Senators, shall enter into force on January 1, 1946.

Article g: The following articles of the Constitution⁹ are hereby annulled: Articles 53, 54, 84, 92, 107, 135, 136, 137, 140, 151, 167, 174, 175, 191, 196, 197, and 207, as well as any others inconsistent with the provisions of this amendment.

Article h: The present amendment shall enter into force upon the date of its sanction.¹⁰

⁹ The articles cited are those of the Codification of 1936.

¹⁰ The amendment was sanctioned on February 16, 1945.

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Index to Constitutions

Frequently several articles of a constitution appear on a single page. It is believed that indexing by article rather than by page is the more satisfactory method, for it eliminates the necessity of glancing through one or more articles on any given page before coming upon the one sought.

As an illustration of the method of this index, the provision setting forth the rights of aliens in the Constitution of 1858 is indexed: ALIENS, *Rights of*, 1858: 49(10). The main entry, "ALIENS," has several subdivisions, one of which is "Rights of." The several constitutions having provisions on this subject are listed chronologically. The date of the constitution is given first and is followed by "49(10)," which indicates that the rights of aliens are set forth in Article 49, subsection 10.

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